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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Civil Action No. 3:18-cv-01865-RS and  
Civil Action No. 3:18-cv-02279-RS

**NOTICE OF FILING OF PLAINTIFFS'  
DEPOSITION DESIGNATIONS AND  
DEFENDANTS' COUNTER  
DESIGNATIONS**

CITY OF SAN JOSE, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Dept.: 3  
Judge: The Honorable Richard G. Seeborg  
Trial Date: January 7, 2019  
Action Filed: March 26, 2018

Defendants hereby submit the deposition designations, attached hereto as Exhibits A-I, for the Rule 30(b)(6) witness for the Census Bureau (Dr. John Abowd) (two volumes), Earl Comstock, John Gore, Ron Jarmin, Karen Dunn Kelley, David Langdon, Sahra Park-Su, and Wendy Teramoto. Plaintiffs' designations are highlighted in yellow and Defendants' counter designations are highlighted in blue.

Dated: January 6, 2019

Respectfully submitted,

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
Defendants.  
-----

Washington, D.C.

Wednesday, August 29, 2018

Deposition of:

DR. JOHN ABOWD

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSEN,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:06 a.m., when were present on  
behalf of the respective parties:

Veritext Legal Solutions

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(Exhibits attached to transcript.)

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VIDEOGRAPHER: Dan Reidy

1 P R O C E E D I N G S

2 WHEREUPON,

3  
4 VIDEOGRAPHER: Good morning. We're going  
5 on the record at 9:06 a.m. on Wednesday August 29,  
6 2018. Please note that the microphones are  
7 sensitive and may pick up whispering and private  
8 conversations. Please turn off all cell phones  
9 and place them away from the microphones, as they  
10 can interfere with the deposition audio. Audio  
11 and video recording will continue to take place  
12 unless all parties agree to go off the record.

13 This is Media Unit 1 of the video  
14 recorded deposition of Dr. John Abowd taken by  
15 counsel for the plaintiff in the matter of the  
16 New York Immigration Coalition, et al., v.  
17 United States Department of Commerce, et al. This  
18 case is filed in the U.S. District Court of the  
19 Southern District of New York. This deposition is  
20 being held at the law offices of Arnold & Porter  
21 located at 601 Massachusetts Avenue Northwest,  
22 Washington, D.C. 20001.

1           My name is Dan Reidy from the firm  
2           Veritext Legal Solutions, and I'm the  
3           videographer. The court reporter is  
4           Karen Jorgenson from the firm Veritext Legal  
5           Solutions.

6           I am not authorized to administer an  
7           oath. I am not related to any party in this  
8           action, nor am I financially interested in the  
9           outcome.

10           Also, counsels' appearances will be noted  
11           on the stenographic record rather than orally at  
12           this time.

13           Will the court reporter please swear in  
14           the witness?

15                           DR. JOHN ABOWD,  
16           called as a witness, and having been first duly  
17           sworn, was examined and testified as follows:

18           THE WITNESS: I do.

19                           EXAMINATION BY MR. HO:

20           Q    Dr. Abowd, before we get started, I just  
21           want to confirm something on the record with your  
22           counsel.



1 A Yes.

2 Q And any time you want to take a break is  
3 okay. The only exception to that is if I posed a  
4 question to, or if anyone else has, to answer that  
5 question before your break; is that okay?

6 A Yes.

7 Q Great. You understand that you're  
8 testifying today as a representative of the  
9 Census Bureau, right?

10 A I do, yes.

11 Q As a representative of the Census Bureau,  
12 you'd agree that question sequencing can affect  
13 the response rate to a survey, right?

14 A Yes.

15 Q So, in other words, you would agree that  
16 if you preface one question, another question or  
17 questions, that would affect the survey response  
18 rate, right?

19 A Yes.

20 Q And as representative of the  
21 Census Bureau, you'd agree that question  
22 sequencing can affect the accuracy of responses to

1 that question survey, right?

2 MR. EHRLICH: Objection. Form.

3 THE WITNESS: I understood your question

4 to be that the sequence of questions on a

5 questionnaire can affect the data quality produced

6 by that questionnaire. If that's what your

7 question was, my answer is yes.

8 BY MR. HO:

9 Q Great. So you'd agree that if you  
10 preface one question with another particular  
11 question or questions, that that could affect the  
12 data quality in terms of the accuracy of the  
13 response to the question, right?

14 A Yes.

15 Q You'd agree that question sequencing can  
16 affect the response rates to a survey in ways that  
17 you wouldn't necessarily anticipate at the  
18 question drafting stage, right?

19 A Yes.

20 Q And one way you would know that -- sorry.  
21 Let me start that again.

22 One way that you would know whether

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1 question sequencing affected response rates would  
2 be to test a question in the sequence that it's  
3 going to be asked, right?

4 A Yes.

5 Q I want to show you a document, we'll mark  
6 it as Exhibit 1.

7 (Plaintiffs' Exhibit 1, Questionnaire for  
8 the American Community Survey, was marked.)

9 BY MR. HO:

10 Q Dr. Abowd, this is the questionnaire for  
11 the American Community Survey downloaded from the  
12 Census Bureau website. Does that look correct to  
13 you?

14 A The document I see is the current paper  
15 form of the American Community Survey.

16 Q Okay. Could we turn to Page 8 of the ACS  
17 survey? And in the left-hand column, Question  
18 Number 8 is a question about citizenship; is that  
19 right?

20 A Yes. That's correct.

21 Q Now, Question Number 7, the question that  
22 immediately precedes the question -- the

1 citizenship question, is a question about where  
2 the person was born; is that right?

3 A Yes. That's correct.

4 Q Now, you said this is the print version  
5 of the ACS survey questionnaire, right?

6 A Yes. That's correct.

7 Q There's also an Internet version of the  
8 ACS questionnaire, right?

9 A Yes.

10 Q Now, if someone answers  
11 Question Number 7, the question about where a  
12 person was born and says that the person was born  
13 in the United States, while taking the Internet  
14 ACS survey questionnaire, does that person then  
15 see Question Number 8, the question about whether  
16 or not the person is a citizen?

17 A No.

18 Q So if someone says --

19 A Excuse me for a second.

20 THE WITNESS: I'm trying to speak up. If  
21 you can't hear me, let me know. When my voice  
22 fades -- I noted it just fade- -- I have to think

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1 place of birth, right?

2 A It's in the next column. The 1950  
3 questionnaire was filled out by an enumerator, not  
4 by the householder. So the exact order in which  
5 the enumerator filled it out isn't controlled by  
6 the way you see the questions.

7 Q So looking at the 1950 census  
8 questionnaire, we don't know how -- what sequence  
9 an enumerator asked the questions in; is that  
10 right?

11 A Well, we would know from the field  
12 training instructions, but I was not able to  
13 locate them.

14 Q But if you just look at the questionnaire  
15 itself --

16 A I agree, they're sequential.

17 Sorry. I should have let you finish.

18 Q Is it fair to say the questions about  
19 citizenship on the ACS, the 2000 long form and in  
20 the 1950 census questionnaire, are preceded by a  
21 question about place of birth?

22 A Yes.

1 Q Now, as planned, the question about  
2 citizenship on the 2020 decennial questionnaire,  
3 that's the same citizenship question as  
4 Question Number 8 on the ACS; is that right?

5 A I'm only verifying the question numbers,  
6 because I don't have it memorized.

7 Q Sure. It's on Page 8.

8 A Yes. That's correct.

9 Q At present, there are no plans to add a  
10 place of birth question to the decennial census  
11 questionnaire, right?

12 A That's correct.

13 Q There has been no cognitive testing of  
14 this citizenship question without a question about  
15 place of birth; is that right?

16 MR. EHRLICH: Objection. Form.

17 THE WITNESS: I'm not prepared to answer  
18 whether there has been no cognitive testing of  
19 this question without being preceded by what we  
20 would call a nativity question. In the  
21 experiments and the evaluations that the  
22 Census Bureau has been able to locate, the survey

1 testing has not been conducted without a nativity  
2 question preceding the citizenship question.

3 BY MR. HO:

4 Q So you're not aware of any testing -- any  
5 cognitive testing of the citizenship question  
6 without a preceding question about nativity; is  
7 that right, Dr. --

8 A I'm not aware of -- sorry. I'm not aware  
9 of any, no.

10 Q Are you aware of any prior census in  
11 which cognitive testing of the full short form  
12 questionnaire had not been conducted before using  
13 that questionnaire for the actual census?

14 A I am not aware of any -- well, let me be  
15 careful.

16 Many censuses were conducted without  
17 cognitive testing, the equivalence of cognitive  
18 testing existed for much of the 20th century. In  
19 preparing for this deposition, I reviewed the  
20 generic answer to the question, how was this  
21 tested, and in some cases, that question elicited  
22 some cognitive testing, for example, the

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1 Current Population Survey, and the  
2 American Community Survey. In other cases,  
3 historical censuses back in the '80s, '70s and  
4 '60s, no one could produce cognitive testing.

5 Q So --

6 A I didn't specifically ask -- I asked, any  
7 testing? And what I got was the sort of standard  
8 protocol testing.

9 Q So you're not aware of any  
10 circumstance -- any previous decennial  
11 census -- excuse me. Let me start that again.  
12 Since there's been cognitive testing of  
13 the decennial short form questionnaire, you're not  
14 aware of any time in which a full short form  
15 questionnaire has been deployed without  
16 cognitively testing that full short form  
17 questionnaire, are you, Dr. Abowd?

18 A I need to answer that question in a more  
19 nuanced form.

20 I am not certain that the full  
21 questionnaire was cognitively tested for the  
22 period in which the question appeared on the long



1 form. I am certain that the questions for the  
2 American Community Survey and the 2010 census were  
3 put through the full battery of the tests.

4 If you would like, during the break, I  
5 will call and ask for cognitive testing of the  
6 censuses prior to the 2010.

7 Q Well, so just stick with the 2010. The  
8 full short form census enumeration questionnaire  
9 was cognitively tested before being deployed for  
10 the actual 2010 census, correct?

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11 A That is my understanding. But it may  
12 have been question by question. I will -- I will  
13 actually, during a break, ask a more specific  
14 question about the form of the testing.

15 Q Dr. Abowd, has there been any field  
16 testing of the citizenship question that's going  
17 to be used on the 2020 census without a prefatory  
18 question about nativity?

19 A No.

20 Q And there's been no field testing of the  
21 full 2020 census questionnaire, including the  
22 citizenship question, correct?

1 A That's correct.

2 Q And before the 2010 census, as far as you  
3 know, there was field testing of the full short  
4 form census questionnaire, right?

5 A Yes.

6 Q At present, there are no plans for field  
7 testing of the full 2020 census questionnaire,  
8 including the citizenship question; is that right?

9 A That's correct.

10 Q Why not?

11 A In May of 2016 the -- Enrique Lamas, the  
12 associate director for demographic programs, who  
13 is performing the nonexclusive functions and  
14 duties of the deputy director -- and I'm going to  
15 call him the acting deputy director from now on --  
16 the acting deputy director asked Victoria Velkoff,  
17 the chief of the American Community Survey Office,  
18 to design a field experiment for the census  
19 questions in the exact ACS form and without a  
20 lead-in nativity question using the experimental  
21 components of the American Community Survey, which  
22 allow us to deploy test instruments without

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1 that there is no longer a valid use case for  
2 producing an information product based on the  
3 answer to that question.

4 Another reason might be because there's  
5 an alternative way of developing as good or better  
6 quality information product without asking the  
7 question on the survey. I anticipate -- but this  
8 is a predetermining decision-making process that  
9 hasn't happened -- that there would be a  
10 continuing valid-use case for citizenship data.  
11 So even if we took it off the American Community  
12 Survey, we would not stop producing statistical  
13 information products that contain citizenship  
14 data.

15 BY MR. HO:

16 Q Let's talk about some of those  
17 information products. Now, the Census Bureau  
18 produces various data files for redistricting  
19 purposes, right, Dr. Abowd?

20 A Yes.

21 Q And one of those redistricting data  
22 products by the Census Bureau is the P.L. 94-171

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1 data file, right?

2 A Yes.

3 Q The Department of Justice uses the  
4 P.L. 94-171 data file; is that your understanding?

5 A Yes.

6 Q And the P.L. 94-171 data file is also  
7 available to the public, right?

8 A Yes.

9 Q The P.L. 94-171 data file has information  
10 in it concerning the population and  
11 characteristics of people at various levels of  
12 census geography, including census blocks, right?

13 A Correct.

14 Q And the PL 94-171 data file is based on  
15 responses to the decennial enumeration, correct?

16 A Correct.

17 Q The P.L. 94-171 data file is considered  
18 reliable, correct?

19 MR. EHRLICH: Objection. Form.

20 THE WITNESS: The P.L. 94-171  
21 redistricting data are produced under the law of  
22 the same name by negotiation between the

1 Census Bureau redistricting office and 51 state  
2 and the Washington, D.C. redistricting offices to  
3 meet the requirements of redistricting legislative  
4 districts in the states. The Census Bureau  
5 provides data to the states and District of  
6 Columbia in the support of redrawing every  
7 legislative district in the country.

8 BY MR. HO:

9 Q Dr. Abowd, the Census Bureau doesn't  
10 consider the P.L. 94-171 data file unreliable,  
11 does it?

12 A No. I was trying to state the use case  
13 for which reliable is defined, but I forgot to  
14 finish my answer.

15 We believe that the P.L. 94-171 data are  
16 reliable for redistricting and reliable for their  
17 Department of Justice Voting Rights Act  
18 enforcement uses.

19 Q The P.L.94-171 data file has never had  
20 citizenship data in it; is that correct?

21 A That is correct.

22 Q Now, another redistricting product

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1 produced by the Census Bureau is the special  
2 tabulation of CVAP and other ACS data; is that  
3 right?

4 A So that's not technically right.

5 Q Okay.

6 A The redistricting office initially  
7 request -- initially assisted the  
8 Department of Justice in the design and production  
9 of a special tabulation of Citizen Voting Age  
10 Population by Race and Ethnicity and at the block  
11 group level. I'm just going to say CVAP from now  
12 on.

13 CVAP, because of a use case that the  
14 Department of Justice had, it was subsequently put  
15 into regular production, so it's produced  
16 regularly. And its timing is now such that it can  
17 be used in conjunction with the P.L. 94-171 data,  
18 but no statute obligates the production of CVAP  
19 and no statute obligates the negotiation with part  
20 of government on to its form and content.

21 Q That special tabulation of CVAP data  
22 is available to the public, right, Dr. Abowd?

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1           A    So I just corrected your word of special  
2   tabulation.   It's a regular tabulation now.

3           Q    Sorry.   Thank you.

4           A    And yes.   It and all tabulations released  
5   for any purpose are released to everyone.

6           Q    The tabulation of CVAP data, it's  
7   considered reliable by the Census Bureau, right?

8           MR. EHRLICH:   Objection.   Form.

9           THE WITNESS:   The Census Bureau -- the  
10   CVAP table, as produced from the American  
11   Community Survey, is tabulated at the block group  
12   level with margins of error.   And so it is  
13   incumbent upon the user of the CVAP table to  
14   understand the limitations of data that are  
15   produced with margins of error and to use them in  
16   a manner that they're fit for.

17   BY MR. HO:

18           Q    The estimates and margins of error in the  
19   tabulation of CVAP data produced by the  
20   Census Bureau are considered accurate by the  
21   Census Bureau, right, Dr. Abowd?

22           MR. EHRLICH:   Objection.   Form.

1 THE WITNESS: The estimates in the CVAP  
2 table are considered correct by the Census Bureau.  
3 Meaning, that they were processed from the  
4 American Community Survey according to a survey  
5 design that was properly executed, and the steps  
6 that were taken in the post processing of those  
7 results are also according to the survey design.  
8 So that when they are estimated, that is the  
9 proper design estimate, and when this margin of  
10 error is released, that is the number that we  
11 believe is an appropriate indication of the  
12 90 percent confidence interval.

13 BY MR. HO:

14 Q Now, the data in that tabulation, that's  
15 based on five-year pooled ACS data; is that  
16 correct?

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17 A The CVAP is produced from what we call  
18 the five-year ACS data, which is a rolling  
19 five-year window on the American Community Survey.

20 Q The tabulation of CVAP data is not based  
21 on a single year of ACS respondents, correct?

22 A That's correct.



1 Q Why is the tabulation based on five-year  
2 ACS pooled estimates instead of single-year  
3 estimates?

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4 A In the design of the American Community  
5 Survey tabulations that are produced using a  
6 single year of data, we only believe sufficiently  
7 reliable for communities that are at least 65,000  
8 population.

9 Q Now, unlike the P.L. 94-171 file, the  
10 tabulation of CVAP data obviously includes  
11 citizenship information, right, Dr. Abowd?

12 A Yes.

13 Q Now, prior to the December 2017 letter  
14 from Arthur Gary at the Department of Justice, had  
15 you ever heard any suggestion that the citizenship  
16 data contained in the tabulation of CVAP was  
17 insufficient for the purposes of DOJ's  
18 Voting Rights Act enforcement?

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19 A From the Department of Justice, no.

20 Q Had you heard that the -- let me start  
21 again.

22 Prior to the 2017 Gary letter, had you

1 of them. I recall talking to Professor Gary King  
2 at Harvard. Professor Mike -- I believe his last  
3 name is McMahn, at the University of Florida.

4 Q Could it be Mike McDonald at Florida?

5 A That's it.

6 And the chief of the bipartisan  
7 commission at -- in California. I remember her  
8 title but not her name. And I don't have notes.

9 And I may have talked to some others, but  
10 it was those three primarily, especially the  
11 California one. She was able to give me very  
12 detailed use cases. Not actual code, but  
13 precisely how they combined various things.

14 Q Let's talk about you mentioned disclosure  
15 avoidance. I want to ask you a couple questions  
16 about that.

17 The citizenship data in the CVAP  
18 tabulation, I believe you said before, those are  
19 estimates at the block group level, correct?

20 A That's correct. Technically, so are the  
21 P.L. 94-171, but they're official estimates.

22 Q Now -- but the difference is, the P.L. 94

1 data, that data doesn't have error margins  
2 associated with it in the way that the CVAP  
3 tabulation, which is based on a survey sample does  
4 have error margins, correct?

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5 A The P.L. 94-171 data are not sample  
6 based. They do have margins of error. We don't  
7 discuss it very much, but they're not -- they're  
8 not because of the sample. They're because of the  
9 statistical methods that intervene in converting  
10 the responses to tabular data, including  
11 disclosure avoidance. The CVAP table is based on  
12 a multistage probability sample, and so it has a  
13 design that implies that it has a sampling error.  
14 And it is the sampling error that we tabulate in  
15 our margins of error.

16 Q Okay. So just to be clear about the  
17 different data forms. The P.L. data, that has  
18 some errors associated with it, right?

19 A Yes.

20 Q It doesn't have the kind of standard  
21 error associated with an estimate based on a  
22 statistical sample, right?

1 A It doesn't have sampling error.

2 Q Thank you.

3 The tabulation of CVAP data does have  
4 sampling error associated with it, correct?

5 A Yes.

6 Q So when you publish the CVAP tabulation,  
7 you're not publishing any particular person's  
8 responses to the ACS citizenship question in a way  
9 that would enable you to identify that person's  
10 responses, correct?

11 A If we did not apply disclosure avoidance  
12 prior to the tabulation, then the CVAP table, as  
13 well as the P.L. 94 tables, would be subject to  
14 reidentification risks.

15 Q So what are the disclosure avoidance  
16 steps that are used for the tabulation of CVAP  
17 data?

18 A The CVAP data are tabulated from the  
19 production of the American Community Survey Office  
20 tabulation system. The exact specification for  
21 the disclosure avoidance that has been applied to  
22 them is confidential and I can't give you those

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1 specifications. What we say in our technical  
2 documents is that we apply household-level  
3 swapping and some synthetic data noise infusion.

4 Q Let's talk about those two things.  
5 What's household-level swapping?

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6 A Household-level swapping means that the  
7 certain variables on the household record, not the  
8 person record, certain variables on the household  
9 record are matched to variables on a household  
10 record in a different geographic area. And if the  
11 household is selected for swapping, and when the  
12 match is found, essentially all the values are  
13 swapped, except the address ID. So it looks as if  
14 the data from a different address lived at the  
15 address of the original and vice versa.

16 Q So when you're building the CVAP  
17 tabulation, in some cases, it's based on data  
18 that's been swapped between two households where  
19 the ACS citizenship response for one household has  
20 been swapped with another; is that right?

21 A I am only allowed to tell you the  
22 variables that are used in the swap that are in

1 public documents. And I told you what was in the

2 public documents.

3 Q Okay.

4 A So the swap controls for family size, for

5 the number of persons in -- not family size. That

6 was not a correct technical term.

7 Q Household?

8 A Household size. Thank you.

9 And the number of members of the

10 household above voting age -- voting age or above.

11 Q When households are swapped, at what

12 level of geography are they swapped?

13 A I'm only allowed to say that the search

14 is over nearby geographic regions.

15 Q So you're not swapping someone from Maine

16 with someone in Arizona?

17 A I'm also allowed to say that the swap

18 never crosses state lines.

19 Q Does the swap ever cross county lines?

20 A If you can produce a technical document

21 that says it does or doesn't, I can confirm it. I

22 can't remember ever reading that, one way or

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1 another.

2 Q And can you say, one way or another,  
3 whether or not the swap ever occurs across census  
4 block group lines?

5 A I have read a lot of the public  
6 documents. I have also read a lot of the  
7 confidential documents. I do not recall any  
8 public document explicitly saying anything other  
9 than we don't swap across state boundaries.

10 Q And do -- so that would -- okay.  
11 Thank you.

12 Well, does swapping ever occur between  
13 census blocks?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: Of course swapping occurs  
16 across census blocks, because there would be no  
17 point in it otherwise.

18 BY MR. HO:

19 Q You mentioned synthetic data noise  
20 infusion for disclosure avoidance. Can you  
21 describe what you mean by that?

22 A There are two methods of doing that. The

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1 one that is used in the American Community Survey  
2 is to develop a model for when a particular record  
3 or item on a record is sensitive. The models are  
4 more precise, but, again, their parameters are not  
5 confidential. Basically, you think of extreme  
6 values as sensitive.

7 And then the statistical model replaces  
8 the sensitive value with a value that's sampled  
9 from the model and from the error distribution of  
10 the model.

11 Q The plan after collecting the citizenship  
12 responses from the enumeration is to deliver  
13 block-level citizenship data to the  
14 Department of Justice for the purposes of VRA  
15 enforcement, right, Dr. Abowd?

16 A Yes.

17 Q The block-level citizenship data that the  
18 Census Bureau is going to deliver to the  
19 Department of Justice, will that be based  
20 primarily to the citizenship question on the  
21 decennial enumeration questionnaire?

22 A The internal expert panel has been

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1 charged explicitly with determining both the  
2 processing of the answers to the citizenship  
3 question in the internal files and the formulation  
4 for the CVAP table at the block level.

5 Q So as of right now, a decision has not  
6 been made yet as to whether or not the CVAP  
7 table -- table that is produced to the  
8 Department of Justice is going to be based  
9 primarily on responses to the citizenship question  
10 on the decennial enumeration or on a different  
11 source; is that right, Dr. Abowd?

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12 A With one correction. We are not  
13 producing a CVAP for the Department of Justice.  
14 We are producing a CVAP table at the block level  
15 as a public use product.

16 Q But otherwise, the answer to my question  
17 is yes?

18 A We have not made a decision on the way in  
19 which we will aggregate the data to the block  
20 level.

21 Q Other than responses to the citizenship  
22 question on the decennial questionnaire, what

1 other data sources might you use in the production  
2 of the block-level CVAP table?

3 A We have said that we will use  
4 the -- what's called the census NUMIDENT data. In  
5 addition, we are negotiating with the  
6 U.S. CIS -- Customs and Immigration Service, did I  
7 expand it right -- U.S. CIS and with the  
8 State Department to acquire additional citizenship  
9 data and data on visas that have been issued to  
10 legal visitors to the United States.

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11 Q Is it fair to say that it has not yet  
12 been decided precisely how the block-level CVAP  
13 table will be assembled?

14 A That's correct.

15 Q Has it been decided whether or not the  
16 block-level CVAP data will be included in the  
17 P.L. 94-171 data file?

18 A It has not.

19 Q Let me show you a document. We'll mark  
20 this as Exhibit 4.

21 (Plaintiffs' Exhibit 4, Federal Register  
22 notice, was marked.)

1 BY MR. HO:

2 Q This is a Federal Register notice. This  
3 is a Federal Register notice from the  
4 Department of Commerce on proposed information  
5 collection and a comment request and the 2020  
6 census.

7 Have you seen this document before?

8 A Yes, I have.

9 Q I want to turn to the second page of the  
10 document -- oh, sorry, just for the record, it's  
11 dated June 8, 2018, and the first page on it is  
12 26643.

13 I'd like to turn to the second page of  
14 the document, that's Page 26644. And the middle  
15 column, the second paragraph, about halfway down  
16 there is a sentence that starts with "If  
17 stakeholders."

18 Do you see that?

19 A Yes.

20 Q The sentence reads, "If stakeholders such  
21 as the National Conference of State Legislatures  
22 elect to receive tabulations of citizenship data,

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1 the Census Bureau will make/require" -- I think  
2 that's a typo -- "a change" -- "a design change to  
3 include citizenship as part of the Public Law  
4 94-171 redistricting data file."

5 So I want to ask you a question about  
6 that sentence. If stakeholders do elect to  
7 receive citizenship data, what kind of design  
8 change can be made to the P.L. 94-171 file to  
9 include citizenship information at the census  
10 block level?

11 A So I was, of course, aware of that  
12 sentence. The way that redistricting office  
13 interacts with the National Conference of  
14 State Legislatures, as is described in the  
15 statute, as I understand it, is to attempt to meet  
16 their data needs, and their data needs are  
17 specifically what's required to redraw legislative  
18 districts. So that's why the redistricting office  
19 worked with the American Community Survey office  
20 to get the CVAP tabulation to be released in a  
21 timely manner with respect to redistricting in the  
22 first place.

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1           My understanding -- careful. I was told  
2           very carefully -- the Census Bureau's  
3           understanding is that if the partners, the  
4           National Conference of State Legislatures, wish to  
5           receive the CVAP table at the block level,  
6           simultaneous with the P.L. 94-171 tabulation --  
7           that we announced the design of a previous  
8           Federal Register notice, but I don't know the  
9           notice number -- that we would facilitate that.

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10           Since the tabulations are all done using  
11           census geography, there are a number of relatively  
12           straightforward ways to facilitate simultaneous  
13           release and use of a CVAP block-level table and  
14           the P.L. 94-171 table that we've prespecified in a  
15           previous Federal Register notice.

16           Q     Have there been any conversations with  
17           the Department of Justice about the format in  
18           which the Census Bureau will deliver block-level  
19           citizenship data?

20           A     I believe the answer to that question is  
21           no. There have been meetings with the  
22           Department of Justice, and they have been about

1 the form of the CVAP and P.L. 94 data, but I don't  
2 believe we've had any specific discussion about  
3 the format. I believe that we presume that our  
4 data production systems, when we say we're going  
5 to deliver data at the block level, we'll deliver  
6 data at the block level in a way that the  
7 receiving users already understand how to use. So  
8 we're planning to disseminate the products in  
9 CEDSCI system at the block level and that's the --  
10 that is the distribution medium that we would be  
11 working towards using. No one has mentioned that  
12 that's problematic.

13 Q I'm sorry. I think I probably asked the  
14 wrong question.

15 A That's possible.

16 Q So --

17 A I hope I answered the right one.

18 Q We talked earlier about how the  
19 Census Bureau has not yet determined how it's  
20 going to assemble the CVAP tables, whether it will  
21 be based on the census enumeration questionnaire  
22 responses, some other data source, what mix of

1 those things.

2 Do you remember that, Dr. Abowd?

3 A Yes.

4 Q Have there been conversations with the  
5 Department of Justice about how the  
6 Department -- sorry -- how the Census Bureau is  
7 going to assemble that block-level CVAP data, that  
8 is, whether it will be based on the enumeration  
9 questionnaire responses or the administrative data  
10 or something else?

11 A There have been conversations with the  
12 voting rights division or branch -- I'm not sure  
13 which -- the voting rights section of the  
14 Department of Justice about the consequences of  
15 the disclosure modernization on the tabular data.  
16 And so we were trying to educate them on that.  
17 That doesn't affect how the census responses and  
18 the administrative data might be combined to  
19 produce those tabular data. There's a variety of  
20 ways in which they can be combined that are going  
21 to result in tabular data with the same  
22 statistical properties.

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1 Q So just to be clear, there have been no  
2 conversations with the Department of Justice about  
3 how the different forms of citizenship data are  
4 going to be combined for purposes of assembling  
5 the CVAP table?

6 A None that I'm aware of, and during a  
7 break, I'll ask to make sure there aren't some  
8 that I wasn't aware of.

9 Q Now, you did mention some conversations  
10 between the Census Bureau and the voting section  
11 at DOJ. Who were those conversations between,  
12 both on the DOJ and the census side?

13 A So the meeting was arranged by  
14 James Whitehorne, who is the chief of the  
15 redistricting office. On the Census Bureau side,  
16 a number of experts were present, primarily  
17 disclosure avoidance experts, but there were also  
18 subject matter experts present. On the DOJ side,  
19 the chief of the section was present and staff  
20 familiar with the Voting Rights Act.

21 Q Was Mr. Whitehorne present at that  
22 meeting?

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1           A     I believe the answer to that is no,  
2     because James has been inviting me to those, but I  
3     will also check to make sure.

4           Q     Roughly, how long did the meeting last?

5           A     About an hour.

6           Q     Where was it?

7           A     DOJ.

8           Q     Just backing up for a moment, a census  
9     block is the lowest level of census geographic,  
10    correct?

11          A     Correct.    Tabular geographic.

12          Q     Census block could have as few as ten  
13    people in it, right, Dr. Abowd?

14          A     A census block can have no people in it.

15          Q     And a census block could have one person  
16    in it, right?

17          A     That's also correct.

18          Q     I want to show you a document -- let's  
19    mark this as Exhibit 5.

20                (Plandiffs' Exhibit 5, Map, was marked.)

21    BY MR. HO:

22          Q     I will represent to you this is a map

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1 derived from census data on the Census website.  
2 It was produced by adjoining tiger files with the  
3 P.L. 94 data file after the 2010 census, and it's  
4 a map of an area in Fort Myers, Florida.

5 So you recognize the rectangles and other  
6 shapes on this map as census blocks, right,  
7 Dr. Abowd?

8 A Well, I can't independently verify that,  
9 but certainly looks like it's right.

10 Q And some of these census blocks have no  
11 people in them, some of them have just a single  
12 person on it, right?

13 A Are you asking me to say that the number  
14 that's sitting in the middle there is a population  
15 count?

16 Q I'll represent to you that that's -- that  
17 the numbers are population counts, and assuming  
18 that that's correct, some of the census blocks  
19 represented on this map have only one person on  
20 them, right, Dr. Abowd?

21 A Yes. I found a singleton.

22 Q Let's talk about that singleton. Now,

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1 you'd agree with me, Dr. Abowd, that if you  
2 publish citizenship information at the block level  
3 based on the responses to the decennial  
4 enumeration solely -- so ignore the administrative  
5 data for a second -- then any singleton, any  
6 person who is the one individual on a census  
7 block, you would be publicizing that person's  
8 response to the citizenship question, correct?

9 A No.

10 MR. EHRLICH: Objection. Form.

11 THE WITNESS: No.

12 BY MR. HO:

13 Q Why not?

14 A Hasn't been correct since 1990.

15 Q Please explain to me why that's the case.

16 A Even before we considered the citizenship  
17 variable, that one person, that household that has  
18 only one person in it, had other characteristics,  
19 and the goal of our disclosure avoidance system  
20 has been to inhibit a user's ability to say that  
21 the person identified as that one count here has  
22 these characteristics.

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1 In 2000 and 2010, that was accomplished  
2 by swapping, primarily. In 2020, that's going to  
3 be accomplished by what's called differential  
4 privacy. They amount to similar goals. One is a  
5 more hardened technique.

6 Q Uh-huh.

7 A But, basically, if you do it properly,  
8 then everything is an estimate and nothing is an  
9 exact tabulation of what happened there.

10 Q Okay. So for these singletons, when you  
11 publish block-level CVAP data, a census block with  
12 one person on it and you publish data that shows  
13 whether or not that person is a citizen, you're  
14 telling me that's not going to disclose that  
15 person's actual citizen status?

16 A It's not even going to be that person's  
17 actual citizenship value for any person.

18 Q So the -- just to be clear -- I just want  
19 to be clear about this. The CVAP block-level data  
20 that gets produced by the Census Bureau, in some  
21 cases, the block-level citizenship values that are  
22 reported on that table are not going to be the

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1 actual citizen statuses of the person or persons  
2 on that census block; is that right?

3 A No, not in some cases. In all cases.

4 Q Okay.

5 A There won't be a single block in which  
6 the citizenship variables or the race and  
7 ethnicity variables are the values reported by the  
8 people who live there.

9 Q So I'm new to this, so I just -- forgive  
10 me.

11 A You're not the only one.

12 Q I want to come back to that.

13 But just explain this to me like a fifth  
14 grader, okay? When you publish -- after the 2020  
15 enumeration, when you publish block-level  
16 citizenship data and you say X number of people on  
17 a particular census block, whether it's one out of  
18 one people, eight of ten people, whatever the  
19 number is, are citizens, according to the table,  
20 that table will not accurately reflect the  
21 citizenship status of the people enumerated in  
22 those citizen blocks; is that right, Dr. Abowd?

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1           A    No.   But I'm actually going to treat you  
2   like a college-aged person and not a fifth grader.

3           Q    Let me just get a clarity on what the no  
4   was, no.   No, I was not right or no --

5           A    That's correct.   No, you were not right.

6           Q    Please explain to me.

7           A    The use case for block-level data is not  
8   that when I take a microscope to the census and I  
9   look at a block, the answers I get there are right  
10  for that block.   That would be enormously  
11  disclosive and would be almost impossible to  
12  prevent reidentification of the confidential Title  
13  13 data, and we haven't done that -- we didn't do  
14  it in 2010.   We didn't do it in 2000.

15               What has happened between 2010 and 2020  
16  is that we now actually know how to produce  
17  block-level data that are suitable for their use  
18  without having to put the exact -- what you call  
19  accurate, but I think you really mean exact  
20  tabulation in that block.   It's too dangerous in  
21  terms of the confidentiality of the underlying  
22  records to put the exact tabulation there.   So you

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1 have to introduce randomness, and what -- we  
2 introduced that randomness through a swapping  
3 system in 2010 and in 2000. We're replacing that  
4 swapping system with a system that introduces the  
5 randomness in a much more controlled way for 2020.  
6 Such that, as you take those blocks -- even though  
7 the block number is going to be noisy and we're  
8 going to tell you how noisy it is -- when you add  
9 them up to voting districts, the more people that  
10 are in that voting district, the more accurate  
11 estimate you get of all of the things you're  
12 trying to tabulate. Not just citizenship,  
13 race/ethnicity.

14 Q Just to clarify my understanding again,  
15 my question wasn't about fitness of use. My  
16 question was just about exact measurement.

17 And is it correct that after you received  
18 the decennial enumeration questionnaire responses  
19 and you tabulate CVAP data at the block level,  
20 that the numbers that you produce for CVAP at  
21 particular census blocks will not reflect the  
22 exact actual values of the number of citizen of

1 voting age at each of those census blocks?

2 A Could you read his question back to me?

3 (Thereupon, the reporter read the record

4 as requested.)

5 THE WITNESS: As read to me, that

6 statement is correct.

7 BY MR. HO:

8 Q Another way to put it is, after you

9 tabulate the CVAP data at the block level, those

10 CVAP numbers at the block level will have error

11 margins associated with them, right, Dr. Abowd?

12 A That's correct.

13 Q Now, in your previous deposition, I  
14 remember reading that you discussed that there is  
15 sometimes disagreement between a person's  
16 citizenship status as reflected in the NUMIDENT  
17 data and the person's response to the citizenship  
18 question on the ACS; is that right?

19 A That's correct.

20 Q I want to show you a document. We'll  
21 mark this as Exhibit 6.

22 (Plaintiffs' Exhibit 6, Email thread, was

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1 Q Do you know anything about their  
2 reputation as political scientists or -- social  
3 scientists? I'm sorry.

4 A I remember looking at the article and  
5 noting where it was published, but I did not look  
6 at the research activities of the authors.

7 Q Let me show you another document. We'll  
8 mark this as Exhibit -- this is going to get a  
9 little confusing now. I'm going to mark this as  
10 Exhibit 7. This was Exhibit 6 in your previous  
11 deposition. This was your January 19, 2018 memo.  
12 (Plaintiffs' Exhibit 7, January 19, 2018  
13 memo, was admitted into evidence.)

14 THE WITNESS: Yes, it is.

15 BY MR. HO:

16 Q Okay. I want to ask you about Page 7 of  
17 the document, which is AR1282. You know, I'm  
18 sorry, I think I have the wrong page number here.

19 It's Page 12 -- AR1283. It should be the  
20 second paragraph after the Header C1, quality of  
21 administrative record versus self-report  
22 citizenship status.

1           A     The paragraph that begins "For all of  
2     these analyses"?

3           Q     Yes.

4           A     Okay.

5           Q     Now, the second sentence here reads, "The  
6     NUMIDENT data contained information on every  
7     person who has ever been issued a Social Security  
8     number or an individual taxpayer identification  
9     number. Since 1972, SSA has required proof of  
10    citizenship or legal resident alien status from  
11    applicants. We use this verified citizenship  
12    status as our administrative citizenship  
13    variable."

14           I want to ask you about what you wrote  
15    there. You described citizenship status in the  
16    NUMIDENT data as verified, right, Dr. Abowd?

17           A     Yes.

18           Q     And you described citizenship status as  
19    reported in the NUMIDENT as verified, because  
20    everyone who obtains an SSN or an ITIN has had to  
21    show a document concerning their citizenship or  
22    legal noncitizenship status, correct?

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1           A     Correct.

2           Q     So if someone shows up in the NUMIDENT as  
3     a noncitizen, just to put this in plain language,  
4     that's because the Social Security Administration  
5     records reflect that a document has been shown  
6     identifying that person as a noncitizen, right?

7           MR. EHRLICH:   Objection to form.

8           THE WITNESS:   No.   It's the citizenship  
9     status that's been documented or if you add an  
10    ITN, the eligibility for an ITIN.

11   BY MR. HO:

12          Q     And the eligibility for an ITIN, if that  
13    record in the NUMIDENT indicates that a person is  
14    a noncitizen, it's because they've submitted a  
15    document that indicates that they're a noncitizen,  
16    right?

17          A     Correct.

18          Q     Now, in your view, if someone is  
19    identified as a noncitizen in the NUMIDENT, that  
20    reflects that person's current noncitizenship  
21    status except for where there's a lag time between  
22    when a noncitizen naturalizes and when the SSA

1 updates the person's record to reflect that change  
2 in status, correct?

3 A Approximately correct. Not everyone is  
4 obligated to notify SSA of a change in their  
5 status. So the things you said, plus the  
6 possibility that it never gets updated.

7 Q Generally speaking, you would agree that  
8 if someone is denoted in the NUMIDENT as a  
9 noncitizen, that that person is likely to be a  
10 noncitizen, subject to a few exceptions?

11 A I won't agree with the last statement.  
12 Subject to a few exceptions, we would intend to  
13 quantify that, but subject to the exceptions in  
14 whatever quantity they are.

15 Q Generally speaking, if someone is -- let  
16 me just try this again.

17 Generally speaking, if someone is  
18 identified in the NUMIDENT as a noncitizen, you  
19 think it's reasonable to conclude that that person  
20 is likely a noncitizen at present, correct,  
21 Dr. Abowd?

22 A If the person is actually coded as a

1 noncitizen, then I believe it is reasonable that  
2 they were issued an SSN with SSA believing that  
3 they were not a citizen. If it's missing, that's  
4 a different matter.

5 Q Now, if someone is identified through ACS  
6 questionnaire as a noncitizen, that's based  
7 exclusively on a survey self-response that is not  
8 verified by an actual document regarding the  
9 person's legal status, right?

10 A In the case of the respondent, that's  
11 correct. In the case of the other members of the  
12 household, it's based on the information provided  
13 by the respondent about those other members of the  
14 household.

15 Q So for anyone on the ACS who is  
16 designated as a noncitizen, it's based on a survey  
17 response, not an actual document about the  
18 person's noncitizen status, correct?

19 A That's correct.

20 Q Let me show you another document. We can  
21 mark this as Exhibit 8. It's another email thread  
22 you're on. The top email is from Paul Beatty.

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1 (Plaintiffs' Exhibit 8, Email, was  
2 marked.)

3 BY MR. HO:

4 Q It is from Paul Beatty to you, dated  
5 January 2, 2018, and the Bates number of the first  
6 page of this thread is AR6629.

7 Now, the third email in the chain is an  
8 email that you write to -- it's on the first page,  
9 Dr. Abowd. It on an email that you write to  
10 Mr. Beatty and John Elting --

11 A Elting.

12 Q Elting, E-L-T-I-N-G-E [sic] -- dated  
13 January 2, 2018, 9:35 a.m.

14 Do you see that email?

15 A Yes, I do.

16 Q Okay. You wrote, "I spent the entire  
17 week of December 18 through 22 working on the  
18 response to this for Ron. He sent it to DOJ on  
19 Friday afternoon, December 22. We proposed adding  
20 citizenship to the P.L. 94-171 to the  
21 administrative records, not a new question on the  
22 2020 census. This proposal had the backing of the

1     redistricting office."

2             You wrote that, right?

3             A     Yes.

4             Q     And the redistricting office is the  
5     redistricting office at the Census Bureau run by  
6     James Whitehorne, right?

7             A     Yes.

8             Q     Now, when you -- what do you mean when  
9     you say that the option of using administrative  
10    records to generate citizenship information for  
11    the P.L. 94 file had the backing of the  
12    redistricting?

13            A     Okay. I was writing an email and I  
14    didn't take my assistant director's advice as  
15    seriously as I should have, to reread every  
16    sentence before you click send. I meant that I  
17    had discussed it with James Whitehorne. I meant  
18    that we would produce a CVAP table in support of  
19    P.L. 94-171.

20            Q     Okay. Fair enough.

21                 So you're referring to, in this email,  
22    the production of a CVAP table with block-level

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1 CVAP data, right?

2 A Yes.

3 Q Okay. And when you say that that  
4 proposal -- the proposal to generate that table  
5 using administrative records had the backing of  
6 the redistricting office led by Mr. Whitehorne,  
7 what did you mean by that?

8 A It meant that I had previously discussed  
9 with him whether this was a -- a tabulation that  
10 we could make that would be considered politically  
11 neutral and appropriate in support of state  
12 redistricting efforts.

13 Q Was one of the reasons why the proposal  
14 to use administrative records to generate  
15 block-level CVAP data have the support of the  
16 redistricting office, the fact that administrative  
17 records are based on verified information about a  
18 person's citizenship status instead of a  
19 self-report on a survey?

20 A Not precisely. What it was based on was  
21 our ability to produce fit-for-use statistics that  
22 we could document the quality of. The fact that

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1 citizenship status is verified, at least for  
2 people since 1972 in the NUMIDENT, is evidence  
3 that the quality of the administrative record has  
4 already received some scrutiny.

5 Q So you would agree with the statement  
6 that you -- I'm sorry. Let me just -- let  
7 me -- start that question again.

8 You described citizenship data from the  
9 NUMIDENT as verified, because it's based on the  
10 receipt of an actual legal document; is that  
11 right, Dr. Abowd?

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12 A Yes.

13 Q Okay. And you would describe responses  
14 to a citizenship question as unverified, right,  
15 Dr. Abowd?

16 A Yes.

17 Q Let me show you another email. We'll  
18 mark this as Exhibit 9.

19 (Plaintiffs' Exhibit 9, Email, was  
20 marked.)

21 BY MR. HO:

22 Q This is an email from Ron Jarmin to a

1           Q    Okay.   Mr. -- Dr. Jarmin writes, "They  
2   have now briefed me, and their findings suggest  
3   that the best way to provide P.L. 94 block-level  
4   data with Citizen Voting Age Population by Race  
5   and Ethnicity would be through utilizing a linked  
6   file of administrative and survey data the  
7   Census Bureau already possesses."

8                   When Dr. Jarmin refers to a linked file  
9   of administrative and survey data, that's a  
10   reference to what you were describing earlier in  
11   your email to Mr. Beatty about adding citizenship  
12   or -- creating a citizenship table via  
13   administrative records, correct?

14          A    Yes.   That's a shorthand way of  
15   expressing that.

16          Q    And when Dr. Jarmin writes using this  
17   administrative record would result in higher  
18   quality data, do you understand that to be a  
19   reference, in part, to the fact that information  
20   about citizenship status in the administrative  
21   record is based, in part, on legal documents about  
22   a person's citizenship status as opposed to a

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1 BY MR. HO:

2 Q Is the linkage performed by the  
3 Census Bureau between ACS survey respondents and  
4 the NUMIDENT data what you would describe as high  
5 quality?

6 A Sometimes, yes, and sometimes, no.  
7 Generally, yes.

8 Q For purposes of the analysis that you  
9 conducted referenced in your January 19th memo,  
10 was the linkage between the ACS respondents and  
11 the NUMIDENT data about citizenship status, was  
12 that a high-quality match?

13 A So the average statistic for that match  
14 was that it was a high-quality match, but not all  
15 of the records matched with high quality.

16 Q Okay.

17 A And some didn't match, at all.

18 Q Generally speaking, when there was  
19 disagreement -- in the analysis that you performed  
20 in your January 19th memo between the  
21 administrative record and a person's survey  
22 response about citizenship data, is it reasonable

1 to conclude that the administrative record is more  
2 likely to be correct about the person's  
3 citizenship status than the response to the ACS  
4 question?

5 A When the administrative record says you  
6 are a citizenship and when the linkage of high  
7 quality, as it generally is for people whom the  
8 administrative record says you're a citizen, then,  
9 yes. When the administrative record says that  
10 you're not a citizen and the linkage is of high  
11 quality, then subject to the caveats I have  
12 already expressed, I would also say yes. But as  
13 the linkage quality deteriorates, then you're not  
14 sure you're looking at the same person and you're  
15 also not confident of the -- either the survey  
16 responses or the administrative record.

17 Q So let's just talk about the  
18 noncitizens --

19 A Okay.

20 Q -- in the NUMIDENT data. When you have a  
21 non- -- someone who is identified as a noncitizen  
22 in the NUMIDENT data and you link that person to

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1 an ACS response and there's disagreement, that is,  
2 the person who is identified in the NUMIDENT as a  
3 noncitizen, but their ACS response is citizen,  
4 when you conducted that analysis for purposes of  
5 your January 19th memo, do you have confidence  
6 that person is likely a citizen -- sorry -- likely  
7 a noncitizen and that the response to the ACS  
8 question was incorrect?

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9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: We believe that the most  
11 likely conclusion is that the administrative  
12 record is correct and the survey response is not.

13 BY MR. HO:

14 Q And I believe in your January memo, you  
15 conclude that about 30 percent of ACS respondents  
16 who are identified as noncitizens in the NUMIDENT,  
17 respond to the ACS citizen question by stating  
18 they are citizens, right, Dr. Abowd?

19 A We agreed to use 30 percent as the  
20 summary for a range, but yes, I think that's a  
21 representative statistic.

22 Q So based on your previous responses

1 today, you think it's likely that 30 percent of  
2 noncitizens who responded to the ACS citizenship  
3 question responded incorrectly about their  
4 citizenship status to the ACS question, right,  
5 Dr. Abowd?

6 A I -- the correct statement is that the  
7 data provided for 30 percent of the survey  
8 respondents who indicated citizens, that wasn't  
9 necessarily provided by that person -- that's what  
10 I'm trying to correct -- is likely incorrect, yes.

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11 Q Do you have any empirical basis to expect  
12 that noncitizens who respond to a citizenship  
13 question on the 2020 decennial enumeration  
14 questionnaire will respond more accurately than  
15 noncitizens who have responded to the citizenship  
16 question on the ACS?

17 A No.

18 Q Is there any reason to think that  
19 noncitizens who respond to the citizenship  
20 question on the 2020 enumeration will respond less  
21 accurately than noncitizens who respond to the  
22 citizenship question on the ACS?

1           A    We have identified an upward trend in the  
2   disagreement between the survey responses and the  
3   administrative record.   It's not precise enough  
4   for us to label as a definitive upward trend, but  
5   it -- there are definitely indications in the data  
6   that the willingness to respond accurately to that  
7   question is declining.

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8           Q    Would you expect noncitizens responding  
9   to the citizenship question on the 2020 decennial  
10   enumeration questionnaire to respond inaccurately  
11   at a higher rate than the inaccuracies you  
12   documented among noncitizens responding to the  
13   citizenship question on the ACS?

14          A    I don't have a well-formed opinion on  
15   that.   I have told you that there's a -- the  
16   appearance of a trend that we have not determined  
17   has the statistical quality to say is a trend, but  
18   is -- so in the absence of that, I would have to  
19   say my expectation is the same as the most recent  
20   data, which would be the 2016 ACS.   That's where  
21   the 30 percent number comes from.

22          Q    For producing the block-level CVAP data,

1 there are, at present, no plans in place to  
2 address situations where a person's self-report in  
3 response to the citizenship question on the 2020  
4 enumeration questionnaire disagrees with that  
5 person's citizenship status as noted in the  
6 NUMIDENT data file; is that right, Dr. Abowd?

7 THE WITNESS: I'm sorry. Could you read  
8 the first part of his question back to me?

9 (Thereupon, the reporter read the record  
10 as requested.)

11 THE WITNESS: I think you're asking me  
12 about the processing decisions for the 2020 census  
13 and the subsequent production decisions for the  
14 CVAP tabulation; is that right?

15 BY MR. HO:

16 Q Right.

17 A There are no current decisions about how  
18 that's going to be done.

19 Q There are no current decisions about how  
20 you're going to reconcile differences between the  
21 responses to the citizenship question and a  
22 person's citizenship status as defined in the

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1 NUMIDENT?

2 A That's correct.

3 Q The last sentence of Exhibit 9,

4 Dr. Jarmin's email says, "I suggest we schedule a

5 meeting of Census and DOJ technical experts to

6 discuss the details of this proposal."

7 That meeting did not take place, did it,

8 Dr. Abowd?

9 A That's correct.

10 Q You anticipated having such a meeting in

11 January of 2018, right?

12 A I wouldn't say that the Census Bureau

13 anticipated having such a meeting. I would say

14 that we offered DOJ the opportunity to meet with

15 us and hoped that they would.

16 Q I'm going to show you a document. We'll  
17 mark it as 10.

18 (Plaintiffs' Exhibit 10, Email, was  
19 marked.)

20 BY MR. HO:

21 Q This is an email thread, the top email is  
22 from Misty Heggeness to you dated January 2, 2018

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1 Q When you say the meeting would be mostly  
2 about messaging, what did you mean by that?

3 A To be honest, I'm not sure. I believe  
4 that on the 2nd of January, we were discussing the  
5 wording of a short summary memorandum that I was  
6 working on for the acting director, summarizing  
7 the state of the research through the end of  
8 December.

9 Q You testified a moment ago that DOJ  
10 declined to take the meeting that was referenced  
11 in Dr. Abowd -- Dr. Jarmin's email; is that right?

12 A That's correct.

13 Q Do you know why?

14 A I believe it's in the administrative  
15 record, the reply to this email. I'll summarize.  
16 Again, if you say this is the author of the  
17 letter, I believe you, but names haven't stuck.

18 Said that the basis for our request is  
19 adequately documented in the letter and we decline  
20 to further meet.

21 Q In your experience, is it unusual to  
22 receive a data request from an agency to the

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1 Census Bureau and then for the agency to refuse to  
2 meet to discuss the technical aspect of that data  
3 request?

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4 A My experience in my current position is  
5 only two years old. I will answer on behalf of  
6 the agency. Yes.

7 MR. HO: We've been going for about an  
8 hour 50, 55 or so. Would now be an okay time for  
9 a bathroom break?

10 MR. EHRLICH: It's okay with me.

11 VIDEOGRAPHER: This concludes Media Unit  
12 Number 1. The time on the video is 10:55 a.m. We  
13 are off the record.

14 (Off the record.)

15 VIDEOGRAPHER: This begins Media Unit  
16 Number 2. The time on the video is 11:19 a.m. We  
17 are on the record.

18 MR. EHRLICH: Just to clarify something  
19 we were discussing earlier on the record when we  
20 were talking about you had received documents  
21 yesterday evening that you wanted to talk to  
22 Dr. Abowd about. We wanted to clarify that you

1 get seven hours for the 30(b)(6). If you want to  
2 reserve time at the end of today in order to  
3 review those documents and ask him more questions,  
4 we can produce him again for you.

5 MR. HO: Thanks for that offer. I'll  
6 confer with co-counsel and counsel for the other  
7 plaintiffs --

8 MR. EHRLICH: Okay.

9 MR. HO: -- and we'll talk.

10 MR. EHRLICH: Thank you.

11 BY MR. HO:

12 Q Dr. Abowd, before moving on to another  
13 topic, I just want to ask a few questions about  
14 some things we discussed earlier.

15 You testified that when the  
16 Census Bureau, after the 2020 decennial census,  
17 produces the block-level CVAP data, that there  
18 will be error margins associated with that  
19 block-level CVAP data. Do you remember that?

20 A Yes.

21 Q Okay. Today, does the Census Bureau know  
22 whether or not the error margins associated with

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1 that block-level CVAP data will be larger or  
2 smaller than the error margins associated with the  
3 block-level CVAP data that DOJ currently uses,  
4 based on ACS estimates?

5 A I have to give a nuanced answer to that  
6 question. We don't know, because we haven't set  
7 the parameters of the disclosure avoidance system  
8 yet. That's somewhat new territory for my  
9 colleagues, and I am certain that one of the  
10 things we will be discussing is whether the error  
11 margins associated with both the P.L. 94 and the  
12 CVAP table at the block level still allow  
13 redistricting offices and the  
14 Department of Justice to use the data effectively.  
15 That is the use case for those data.

16 Q Would you agree -- never mind. That's  
17 fine.

18 You testified a little bit about a  
19 possible RCT of the citizenship question and  
20 request from, I believe it was Enrique Lamas, to  
21 get a proposal for doing an RCT of the citizenship  
22 question without the prefatory nativity question

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1 responsibility, in conjunction with the acting  
2 director, for giving me the no-go, but he didn't  
3 tell me whether he discussed with anyone else  
4 outside the Bureau.

5 Q So you're aware that Dr. Jarmin and -- I  
6 don't know if it's Dr. or Mr. Lamas?

7 A It's doctor. It's Dr. Velkoff, too.

8 Q Okay. You don't know if anyone other  
9 than Dr. Jarmin and Dr. Lamas were involved in  
10 this -- the decision not to do the RCT of the  
11 citizenship question?

12 A I do not know.

13 Q You testified at one point whether or  
14 not -- excuse me -- you testified at one point  
15 that there are indicators in that -- let me try  
16 again.)

17 I think you testified earlier that there  
18 are indicators suggesting that nonresponse rates  
19 to a citizenship question among noncitizens are  
20 increasing; is that right?

21 A Yes.

22 Q What are those indicators that you were

1 referring to?

2 A In our technical research, we've  
3 conducted statistical experiments that attempt to  
4 estimate the extent to which certain categories of  
5 households that either include a noncitizen or  
6 include someone for whom we don't know the  
7 citizenship status might not respond to  
8 questionnaires that include a citizenship  
9 question. In the analysis for the 2000 census,  
10 that number was around 3 percentage points. In  
11 the analysis circa 2010, it was closer to 5  
12 point -- 5 percentage points. And the most recent  
13 analyses we have produced, it's closer to five and  
14 a half percent -- 5.8 percentage points and  
15 applies to a bigger subpopulation of households  
16 than our previous analyses.

17 Q Any other analyses suggesting that there  
18 are indications of greater nonresponse over time  
19 from noncitizens to a citizenship question other  
20 than the ones you've just described?

21 A If you look at the item nonresponse rates  
22 and the break-off rates, the reason I said that

1 they didn't meet statistical standards for saying  
2 we think there's a trend is because they're short  
3 and there have been some procedural changes that  
4 materially affect the year-to-year comparisons,  
5 but they are higher now than they were earlier in  
6 the decade.

7 Q So we have increasing unit nonresponse,  
8 increasing item nonresponse and increasing  
9 break-off rates, all suggesting that noncitizens'  
10 sensitivity to a citizenship question have been  
11 increasing over time; is that right, Dr. Abowd?

12 A You have to permit the caveat that I  
13 didn't say increasing. I said they're going up,  
14 but that, specifically, I don't have sufficient  
15 statistical evidence to conclude there's an  
16 increase in trend.

17 In the case of the -- of the item  
18 nonresponse rates, it's because of the change in  
19 design that occurred in 2013. In the case of the  
20 break-off rates, it's because we haven't been able  
21 to analyze full 2017 data, and we only had 2016  
22 data. So we don't -- I don't, really, even have



1 two points for the break-off rates.

2 But at the time we prepared our technical  
3 report for the Secretary, we had the 2000 and the  
4 2010, and those two numbers are statistically  
5 different from each other, and the one in 2010 is  
6 larger.

7 Q But you would agree that the item  
8 nonresponse and the break-off rate analysis that  
9 you've done, they're both consistent with the  
10 notion that noncitizens' sensitivity to a  
11 citizenship question and unwillingness to respond  
12 to such a question, have increased over time?

13 MR. EHRLICH: Objection. Form.

14 THE WITNESS: I will agree to the  
15 statement, consistent with the -- with the  
16 increase over time, yes.

17 BY MR. HO:

18 Q Other than the three things we've  
19 discussed, unit nonresponse, item nonresponse and  
20 break-off rates, are there any other indicators  
21 suggesting that noncitizens' sensitivity to a  
22 citizenship question has been increasing over

1 time?

2 A There are survey indicators from the  
3 Census Barriers, Attitudes and Motivators Survey  
4 and qualitative analysis from focus groups that  
5 also suggest it.

6 Q Other than the CBAMS and the focus  
7 groups, any other indicators that you're aware of  
8 suggesting that noncitizens sensitive to a  
9 citizenship question has been increasing?

10 A None that I can recall at this moment.

11 Q Okay. You said something about the 5.8  
12 percentage point reduction in response rates among  
13 noncitizens to a citizenship question -- because  
14 of the presence of a citizenship question; is that  
15 right, Dr. Abowd?

16 A I can restate the question so it's right.

17 Q Please.

18 A We did analyses -- we did analyses that  
19 compared different categories of households that  
20 included citizens with categories of households  
21 that either didn't or may not include citizens.  
22 And the most reset of them -- which is in the

1 to the Department of Commerce in response to a  
2 discovery request we were processing.

3 Q Do you know when the August 6th version  
4 of that paper was produced from the Census Bureau  
5 to the Department of Commerce?

6 A I do not.

7 Q Was it yesterday?

8 A I don't think so -- no. It definitely  
9 wasn't yesterday. It -- because I asked for a  
10 copy at the Department of Commerce on Monday, and  
11 I was given a copy with the August 6th date. I  
12 was expecting to see a copy with a July date.  
13 There's no difference between them, other than  
14 some grammar mistakes that have been corrected.

15 Q I want to show you a document that you  
16 talked about at your last deposition. This was a  
17 short version, I think, of the analysis we were  
18 just talking about. It was the first Abowd  
19 Deposition Exhibit 4, marking it as Exhibit 11 for  
20 this deposition.

21 (Plaintiffs' Exhibit 11, Analysis, was  
22 marked.)

1 A In this case, yes. That's right.

2 Q Now, the first sentence in the paragraph  
3 above Table 6 reads: Other proxy measures for  
4 understanding response sensitivity to questions of  
5 citizenship can be examined with longitudinal  
6 data.

7 What does that sentence mean?

8 A It's a -- it's terse technical writing  
9 for it, and now we're going to do things similar  
10 to what we just did for cross-sectional studies  
11 with some longitudinal data.

12 Q And the premise here is that a  
13 longitudinal analysis could shed some light on the  
14 sensitivity of citizen- -- or the question on  
15 citizenship, right, Dr. Abowd?

16 A Yes.

17 Q The SIPP, S-I-P-P, that's a longitudinal  
18 survey featuring a citizenship question, correct?

19 A That's correct. It's the Survey of  
20 Income and Program Participation.

21 Q And who is it conducted by?

22 A The Census Bureau.

1 Q According to the table, in Wave 1 of the  
2 SIPP, noncitizens were 6.1 of respondents but by  
3 Wave 2, they were only 5.7 percent of SIPP  
4 respondents, correct?

5 A That's correct.

6 Q So just to explain what that means,  
7 noncitizens shrank as a share of respondents to  
8 this longitudinal survey because they dropped out  
9 of responding to the survey at a higher rate than  
10 did citizens, correct, Dr. Abowd?

11 A So the two point estimates, 6.1  
12 percentage point and 5.7 percentage point -- the  
13 5.7 is less than the 6.1. I think I asked the  
14 authors to ensure that the standard error of the  
15 difference was -- which is negative -- was also  
16 sufficiently precise. On the hypothesis that  
17 that's the case -- I don't have the standard or  
18 the difference here -- then, yes, that's the  
19 correct conclusion.

20 Q So the idea that the white paper's  
21 authors are operating under here is that if  
22 noncitizens dropped out of a longitudinal survey

1 featuring a citizenship question at a higher rate  
2 than did citizens, then that suggests that  
3 noncitizens are more sensitive to a citizenship  
4 question and might fail to respond to a survey  
5 with a citizenship question at a higher rate than  
6 citizens; is that right?

7 A So the nuanced answer to your question is  
8 that it is suggestive of that. In these kinds of  
9 survey situations, we can't design the gold  
10 standard randomized controlled trial for which the  
11 precise hypothesis that you stated would be the  
12 one you could precisely test. So the  
13 questionnaire does include a citizenship question.  
14 It includes lots of other questions, as well. And  
15 subject to that caveat, the conclusions that you  
16 drew about the difference between Wave 1 and  
17 Wave 2 participation -- sorry, response rates --  
18 is correct.

19 BY MR. HO:

20 Q And the Census Bureau agrees with the  
21 authors of the white paper that this longitudinal  
22 analysis is suggestive of the notion that

1 noncitizens are more sensitive to a question about  
2 citizenship and less likely to respond to a survey  
3 featuring a citizenship question, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: The Census Bureau considers  
6 the evidence from the SIPP to be consistent with  
7 the other evidence that we have examined  
8 suggesting that households that either contain a  
9 noncitizen or contain at least one person for whom  
10 we do not know the citizenship status are more  
11 sensitive to questionnaires that include questions  
12 about citizenship status.

13 BY MR. HO:

14 Q There are other longitudinal studies  
15 conducted by the Census Bureau featuring a  
16 question on citizenship, right, Dr. Abowd?

17 A Yes.

18 Q For example, the Current Population  
19 Survey, CPS, is a longitudinal survey conducted by  
20 the Census Bureau featuring a citizenship  
21 question, correct?

22 A So that's not technically correct. The

1 A It's a housing unit --

2 Q I think I understand.

3 A You don't know who is in the housing unit  
4 when you go the second month and second sample.  
5 That's the point I'm trying to make.

6 Q I think I understand.

7 A Okay.

8 Q All right. Let me try this again.

9 Time 1, right, we have a group of CPS  
10 respondents. Some housing units have a  
11 noncitizen, some housing units do not have a  
12 noncitizen. Time 2, the share of respondents to  
13 the CPS from the housing units that at Time 1 had  
14 a noncitizen has shrunk. Would that be suggestive  
15 of the notion that noncitizens are more sensitive  
16 to a citizenship question than are U.S. citizens?

17 MR. EHRLICH: Objection. Form.

18 THE WITNESS: Replace Time 1 and Time 2  
19 with Month and Sample 1 and Month and Sample 2.  
20 If you look at statistics for Month and Sample 2  
21 for households for Month and Sample 1 that  
22 identified as citizen versus for households for



1 Month and Sample 1 that identified as noncitizen  
2 and you found differences in the Month and  
3 Sample 2 statistics, that would be as similar as  
4 you could construct to the hypothetical in Table 6  
5 of the working paper we're talking about.

6 BY MR. HO:

7 Q And would that analysis -- if I showed  
8 that Month and Sample 1 housing units that  
9 featured a noncitizen responded at a lower rate at  
10 Month and Sample 2 than the households that at  
11 Month and Sample 1 were all citizen households,  
12 would that be suggestive of greater sensitivity of  
13 noncitizens to a citizenship survey question?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: That would have an  
16 interpretation similar to Table 6 in the working  
17 paper, yes.

18 BY MR. HO:

19 Q Now, during your last deposition, do you  
20 remember talking about the acronym C-A-P-I or  
21 CAPI?

22 A Computer-assisted personal interview,

1     yes.

2                     (Conference call interruption.)

3     BY MR. HO:

4             Q     CAPI is, basically, a nonresponse  
5     follow-up for the ACS; is that right?

6             A     As of right now, that is correct.

7             Q     Okay.   And what --

8             A     That is the field technical technique  
9     used for nonresponse follow-up in the ACS.

10            Q     Okay.   And what it means is you send,  
11     basically, a census employee out with some kind of  
12     personal handheld computer device to try to get an  
13     answer to the ACS from a household that didn't  
14     respond; is that right?

15            A     That's correct.

16            Q     Okay.   Now, the SWAT team that did the  
17     white paper that we talked about earlier,  
18     conducted a stratified analysis of the CAPI  
19     response rates breaking census tracts into deciles  
20     from those with the -- the lowest percentage of  
21     household with the noncitizen to those with the  
22     most; is that right?

1           A    If you're going to ask me about one of  
2   the analyses that's in this early draft, I need to  
3   know which one.

4           Q    Sure.

5           A    If you're going to ask me about something  
6   else, I need to have my memory refreshed as to  
7   what you're asking me about.

8           Q    I understand. I don't think it made its  
9   way into that version of the white paper.

10          A    Okay.

11          Q    But my understanding is that at some  
12   point, the SWAT team looked at CAPI response rates  
13   and they compared census tracts to a stratified  
14   analysis, deciles -- percentage -- a household --  
15   census tracts with the lowest percentage of  
16   households with a noncitizen and -- you know, from  
17   1 to 10, those with the greatest percentage of  
18   households with a noncitizen, and compared the  
19   CAPI response rates. Does that help refresh your  
20   memory?

21          A    You've refreshed my memory to the point  
22   that I acknowledge that an analysis was done in

1 which tracts were stratified by decile. But I  
2 would like to review what it is you're asking me  
3 about, because I don't remember specifically what  
4 the stratifier was and what the response was.  
5 I've had to look at a lot of documents over the  
6 last several weeks. I simply am not sure what the  
7 exact analysis is you're asking me about.

8 (Plaintiffs' Exhibit 12, Tables, was  
9 marked.)

10 Q Okay. Let me show you a document. It's  
11 been marked as Exhibit 12. It's a series of  
12 tables. The first page on the document is  
13 AR10408.

14 And I'm looking at the third table, the  
15 CAPI response rate. Now, this table shows an  
16 analysis of census tracts broken into deciles from  
17 least to most percentage of households with a  
18 noncitizen comparing CAPI response rates; is that  
19 right, Dr. Abowd?

20 A Yes. I don't recall exactly how the  
21 tract deciles were determined, but they are from  
22 least to most noncitizen. That's right.

1           Q    So one is the decile of census tracts  
2   with the lowest percentage of households with a  
3   noncitizen.   Ten is the decile of census tracts  
4   with the largest percentage with households with a  
5   noncitizen, correct?

6           A    That's correct.

7           Q    And, basically, what that means is, as  
8   you go from 1 to 10, the percentage of households  
9   in a census tract increases, correct?

10          A    Percentage of households with a  
11   noncitizen.

12          Q    Noncitizen, sorry.

13               And when we look at -- just to take one  
14   number from the table -- for the 10th decile, year  
15   2016, the CAPI response rate is 87.4, bottom right  
16   corner of the table.   What does that mean for the  
17   CAPI response rate to be 87.4 for that decile  
18   census tract?

19          A    I'm going to check with the author of  
20   this table on the next break to make certain that  
21   the CAPI here means only the nonresponse follow-up  
22   that was followed up by computer-assisted personal

1 interview. We sometimes lump Internet  
2 self-response in, but I don't think that was done  
3 here, because Internet self-response is by itself  
4 separately, and it didn't start until 2013.

5 Q Uh-huh.

6 A And up until 2016, you could also be  
7 followed up with CATI, computer-assisted telephone  
8 interview. So I think I've told you correctly,  
9 that this is nonresponse follow-up  
10 computer-assisted personal interview.

11 In that case, it means that the subsample  
12 of nonrespondents that was selected for  
13 nonresponse follow-up in the ACS were successfully  
14 followed up with the percentages indicated in the  
15 table.

16 Q So just to be clear, the subset of  
17 non- -- of households chosen for nonresponse  
18 follow-up on the ACS for the tenth decile in 2016,  
19 nonresponse follow-up on the ACS was successful  
20 87.4 percentage of the time?

21 A That's correct.

22 Q Now, if we look at this table, correct,

1 that the Bureau found that nonresponse follow-up  
2 for the ACS has declined each year for each  
3 decile; is that correct?

4 A That -- that seems to be correct.

5 Q Okay. And is that consistent with the  
6 notion that citizenship has become a more  
7 sensitive question on surveys since the year 2010?

8 A One of the reasons that this particular  
9 analysis doesn't appear in some of the technical  
10 papers that were relied upon by the larger group  
11 of senior executives at the Census Bureau in  
12 drawing their conclusions, is that the internal  
13 peer review of this particular analysis suggested  
14 that there were enough qualifications to that  
15 conclusion that many of them were unwilling to  
16 make it.

17 You correctly characterized the trend  
18 lines, that there were changes to the design of  
19 the survey that occurred here and there were also  
20 potential other differences that -- that many of  
21 the people who looked at this found qualifications  
22 that -- so that's the right conclusion. But it

1 isn't a conclusion that the Census Bureau,  
2 speaking collectively for the people who peer  
3 reviewed this analysis, would have jointly made.

4 Q I understand there are caveats, but  
5 notwithstanding those caveats, is the decline in  
6 successful nonresponse follow-up for the ACS since  
7 2010 suggestive of the notion that citizenship  
8 questions on surveys have become more sensitive  
9 since 2010?

10 A It's consistent with that interpretation,  
11 yes.

12 Q It also appears that in each year, as a  
13 census tract has greater percentage of households  
14 with a noncitizen, that nonresponse follow-up,  
15 generally, is less successful. Would you agree  
16 with that?

17 A Yes. It's consistent with that  
18 interpretation, as well.

19 Q Okay. So is it consistent -- is that  
20 data consistent with the notion that noncitizen  
21 households are less likely to cooperate with  
22 nonresponse follow-up to the ACS?



1           A    So we didn't -- well, if we did a  
2   difference-and-difference analysis of this table,  
3   I don't remember it.   And I flipped and it doesn't  
4   seem to be in here.   So without a  
5   difference-and-difference analysis, I'm not able  
6   to draw a conclusion like the one you just  
7   suggested.

8           Q    But as a census tract gets a greater  
9   percentage of households with a noncitizen,  
10   generally speaking, nonresponse follow-up in that  
11   census tract is less successful, correct,  
12   Dr. Abowd?

13          A    Is less successful than?

14          Q    Than it is for a census tract with a  
15   lower percentage of households with a noncitizen?

16          A    You're asking me do the numbers go down  
17   when the deciles go up, and that's correct, yes.

18          Q    Now, I believe when you testified at your  
19   last deposition, when you were talking about the  
20   CAPI analysis, you described something like a  
21   spreadsheet that had all the tables that you  
22   looked at which had been cleared for release by

1           Q   Has the Census Bureau, in response to  
2   this analysis or for any reason, taken any  
3   measures specifically to address the lower success  
4   rate of nonresponse follow-up in census tracts  
5   with higher percentages of noncitizen households?

6           MR. EHRLICH:   Objection.   Form.

7           THE WITNESS:   I don't believe that you  
8   could point to any specific activity that would  
9   have been explicitly stratified by this decile  
10   analysis.   The declining response rate is a  
11   general problem, and we attempt to manage field  
12   operations in a manner that is consistent with  
13   keeping those response rates up.   In fact, one of  
14   the reasons we switched to Internet self-response  
15   in the ACS was in an effort to increase the  
16   voluntary response rate.   So -- so, generically,  
17   we're, of course, interested in keeping the  
18   response rate high.   It's a mandatory survey, but  
19   voluntary or self-response is a critical cost  
20   control factor.

21           That said, the budget for the  
22   American Community Survey has not been increased

1 in proportion to the cost of living, so we don't  
2 have the same resources to do nonresponse  
3 follow-up. So we focus on -- we focus on those  
4 things that are going to get the total nonresponse  
5 follow-up on the --

6 BY MR. HO:

7 Q But has -- sorry.

8 Has the Census Bureau done anything to  
9 try to address the lower rates of nonresponse  
10 follow-up success in areas that have higher  
11 percentages of noncitizen households?

12 A I believe I just said that I'm not aware  
13 of any activity specifically correlated with --  
14 explicitly correlated with these indicators.

15 Q Thank you. Sorry.

16 Just a few other quick questions. You're  
17 familiar the acronym of C-S-A-C or CSAC?

18 A Yes.

19 Q And that stands for Census Scientific  
20 Advisory Committee?

21 A Yes.

22 Q And the members of CSAC advised the

1 my rank, but some will send a specialist. And  
2 then the director conveys to the Department of  
3 Commerce a set of recommendations to fill a  
4 vacancy. It's the Department of Commerce then  
5 decides to whom to extend that invitation.

6 Q Is it fair to say that, generally  
7 speaking, CSAC members are highly regarded as  
8 social scientists by the Census Bureau?

9 A Yes.

10 Q You're familiar with former Census Bureau  
11 director John Thompson?

12 A I have met Dr. Thompson. Mr. Thompson,  
13 excuse me.

14 Q Fair to say that the Census Bureau has a  
15 high opinion of Dr. Thompson as a scientist?

16 A It is Mr., and yes.

17 Q Fair to say the Census Bureau considers  
18 him well versed in standard Census Bureau testing  
19 practices?

20 A Yes.

21 Q Has the Census Bureau contracted with any  
22 private companies or PR firms to conduct research

1 citizenship question?

2 Reingold spelled R-E-I-N-G-O-L-D.

3 A I do not know whether Reingold is a  
4 subcontractor in the integrated communication  
5 contract. If they are, then the answer could be  
6 yes. I'm not aware of another contract, but I  
7 will check during a break.

8 Q Okay. Does the Census Bureau think that  
9 adding a citizenship question to the 2020  
10 enumeration questionnaire is a good idea?

11 A No.

12 MR. HO: Can we go off the record for a  
13 second?

14 VIDEOGRAPHER: We're going off the  
15 record. The time on the video is 12:07 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: This begins Media Unit  
18 Number 3. The time on the video is 1:03 p.m. We  
19 are on the record.

20 BY MR. HO:

21 Q Dr. Abowd, I don't have any other  
22 questions for you at this time, but I know you

1 field period.

2 BY MR. HO:

3 Q Thank you. And this would have been the  
4 only testing of the 2020 decennial questionnaire  
5 with a citizenship question in it, correct?

6 A This is the only field testing with and  
7 without citizenship question, directly analyzing  
8 the citizenship question that we have considered  
9 at the Census Bureau.

10 I also verified that the 2010 census  
11 questionnaire had full cognitive and field  
12 testing. That the 2020 questionnaire without the  
13 citizenship question had -- so I asked him the  
14 same way you asked me, was adequately, cognitively  
15 tested; yes.

16 Q I'm sorry. Who did you ask whether or  
17 not?

18 A I asked my staff -- the same group that I  
19 had been asking generally about the testing, I  
20 specifically asked about the cognitive testing for  
21 the 2020 questionnaire, with and without the  
22 citizenship question, and their answer was that it

1 was adequately tested with the citizen- -- without  
2 the citizenship question, but not adequately  
3 tested with the citizenship question, cognitive  
4 testing.

5 Q Thank you.

6 A Okay.

7 And, thirdly, in this table, Exhibit 12,  
8 the third panel, the CAPI response rate, I  
9 confirmed, so I can now say the way the tract was  
10 put into deciles was based on the five-year  
11 American Community Survey for the middle five  
12 years of the table, so 2011 through 2015. That  
13 the CAPI response rate is just the CAPI response  
14 rate in the nonresponse follow-up system, okay.

15 I think those were all the things we had  
16 unresolved. If you think there were others -- we  
17 went over our notes, but I think I've answered the  
18 questions that that were unresolved.

19 MR. HO: I don't have any others right  
20 now, so I'm going to pass you along to one of the  
21 other lawyers for one of the other plaintiff  
22 groups, subject, of course, to the issue that I've

1 enumeration, but it is part of census. And so the  
2 process that we had in place for evaluating which  
3 questions would be on the long form dates from the  
4 creation of the long form. And it was inherited  
5 by the American Community Survey and modernized  
6 for the American Community Survey, and the way in  
7 which these bullets on this page -- page AR4804  
8 describe the process as adaptation of the process  
9 that is in place and is used for questions on the  
10 American Community Survey.

11 Q But to go back to my question,  
12 this -- this process that we've just talked about,  
13 the three reviews that are on this page, 4804, if  
14 any one of those reviews advises against the  
15 addition of a question, does the question get  
16 added?

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17 A So it would be more iterative than that.  
18 If a technical review revealed that it was going  
19 to be difficult to ask the question for some  
20 reason -- let's speak hypothetically -- then we  
21 would probably not prepare a clearance package  
22 supported by a technical analysis that says this



1 is not likely to work very well. The  
2 Census Bureau would re-examine the use case for  
3 the particular request. If it's a -- if it's a  
4 specific agency of the executive branch, one of  
5 our principal statistical clients, we would work  
6 with that agency to refine the request. What we  
7 were attempting to determine is the least  
8 burdensome way of delivering statistics that are  
9 suitable for the purpose that we're being asked to  
10 produce them.

11 So in that iterative process, would  
12 attempt to identify a technically better way of  
13 addressing the data need. And, generally  
14 speaking, that -- in that iterative process, both  
15 the Census Bureau and the principal client -- all  
16 these data are going to be released for public  
17 use, so the principal client is acting as the  
18 agent of the general public in design of a  
19 product. If there was an agreement that this  
20 particular technical solution will work and it  
21 will meet the needs, then we would -- and then it  
22 would involve a modification or a question -- a

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1 new question on the survey, then we would move  
2 forward with the questionnaire design and the  
3 testing that we would normally do, and we would  
4 eventually get to the point where a clearance  
5 package would be sent forward.

6       There might be some other regulatory  
7 barriers. There are lots of -- I shouldn't say  
8 lots of. There are several very specific  
9 categories of data that statistical agencies and  
10 other agencies of the federal government collect  
11 that are governed by regulations of OMB. And so  
12 if the request involved something that inherently  
13 meant you had to modify or update one of those  
14 standards, then that would also come into play.  
15 And those standards are regularly modified and  
16 updated, and there, the Office of the Chief  
17 Statistician takes charge of creating the relevant  
18 working group, preparing the modification, doing  
19 the Federal Register notices on the modifications.  
20 So if you have to modify the standards before you  
21 can produce a survey instrument, then that process  
22 would happen.

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1           This would all basically go on  
2 simultaneously, but no OMB clearance package would  
3 be sent to the Office of the Statistician prior to  
4 doing the ground work that the chief statistician  
5 is known to require before she, in this case,  
6 would approve the clearance request.

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7           Q     So did I understand you correctly that  
8 the clearance package has not yet been submitted  
9 to OMB with regard to the citizenship question?

10          A     The clearance package for the specific  
11 forms for the 2020 census has not yet been  
12 submitted to OMB.

13       BY MS. SHAH:

14          Q     I'm going to hand you what's Exhibit 14,  
15 and I only have two copies, because they're very  
16 large. I'm going to have this marked as  
17 Exhibit 14, which is statistical quality standards  
18 from the Census Bureau.

19               (Plandtiffs' Exhibit 14, Census Bureau  
20 statistical quality standards, was marked.)

21       BY MS. SHAH:

22          Q     Are you familiar with this document?

1           A     So the guidelines are Census Bureau  
2     guidelines, and the employee, in the conduct of  
3     his or her job, when preparing an information  
4     product covered by the standards, that's what I  
5     just explained, would be expected to abide by  
6     standards, yes.

7           Q     And what about the Secretary?

8           A     The Secretary is not bound by the  
9     standards.

10          Q     And we talked about some of the products  
11     that this applies to. Does it apply to the  
12     decennial census questionnaire?

13          A     Yes.

14          Q     And, more specifically, the citizenship  
15     question, as well?

16          A     Yes.

17          Q     So is it fair to say that the  
18     Census Bureau has to follow these standards when  
19     they develop and design survey questionnaires?

20          A     It is fair to say that every information  
21     product and statistical program within the  
22     Census Bureau is expected to follow these

1 standards? Yes.

2 Q And if you can turn to Page 5 of this  
3 document -- and it's a large one, so, you  
4 know -- when we're talking about Requirement A16,  
5 which says that, "Quality control checks must be  
6 performed to ensure the accuracy and completeness  
7 of the program plans including, among other  
8 things, survey designs."

9 Does this requirement apply to the  
10 decennial census questionnaire?

11 A Yes.

12 Q And what does it mean, survey design?

13 A In this -- on Page 5, it has a very broad  
14 interpretation. We might sometimes call it the  
15 lifecycle design, all of the components that go  
16 into executing a -- an information product,  
17 including, to be frank, a case where there's no  
18 actual survey --

19 Q Uh-huh.

20 A -- but it's the design of an information  
21 product.

22 Q And has this quality check been done for

1           Q    So was a waiver for a quality check  
2   obtained in the question -- in this instance?  
3   Sorry.

4           A    So the answer to the question whether a  
5   waiver was obtained for any part of the end-to-end  
6   operation is no.

7           The question that I heard was, should a  
8   waiver have been obtained because of the quality  
9   variation over the -- over the life of the -- of  
10   the survey? Let me also say that these are  
11   quality standards that bind the agency, but a  
12   sitting director and a sitting acting director can  
13   instruct the staff to do something and they're  
14   expected to do something. And while we would  
15   expect a sitting director or acting director to  
16   check whether there was a standard, there was a  
17   lot of urgency here. So the next methods and  
18   standards meeting would have been after the whole  
19   decision process was made.

20           But the quality of the process by which  
21   we conducted the end-to-end test was extensively  
22   peer reviewed inside the Census Bureau by the

1 Census Bureau conducts testing throughout the  
2 decade preceding the decennial census?

3 A Yes.

4 Q Would such testing reveal  
5 whether -- would that be considered pretesting?

6 A Yes.

7 Q And would such testing reveal whether a  
8 question is unduly sensitive?

9 A Yes.

10 Q And if so, responses collected from a  
11 survey or testing aren't used for data production,  
12 would you say that that question can be construed  
13 as unduly burdensome?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: I think you just asked me  
16 if you collect an item and then you don't use it  
17 to tabulate anything, is that undue burdensome?  
18 Yes.

19 BY MS. SHAH:

20 Q And would the Census Bureau run --  
21 typically run pretesting to identify issues with  
22 order, context or formatting?

1           A     Yes.

2           Q     And did it do so with -- in the context  
3     of order, context and formatting to the  
4     citizenship question?

5           MR. EHRLICH:   Objection.   Form.

6           THE WITNESS:   If you're asking  
7     specifically with respect to the questionnaire for  
8     the 2020 census, no.

9     BY MS. SHAH:

10          Q     And if we can go, actually, back a page,  
11     to Page 7, and look at Requirement A2-2, it's at  
12     the top of the page. It begins that -- a plan  
13     must be produced that addresses four different  
14     requirements, and I want to go through each  
15     requirement separately.

16                If -- "The plan must address program  
17     requirements for the data collection instrument  
18     and the graphical user interface or GUI, if  
19     applicable."

20                Does this requirement apply to the 2020  
21     census paper questionnaire?

22          A     Yes.



1 the 2015 National Content Tests. There were  
2 separate evaluations of all of those materials.

3 Q And can supporting materials include  
4 things like questionnaire instructions?

5 A Yes.

6 Q What about language-assistance materials?

7 A Yes.

8 Q And promotions or advertising materials?

9 A Most of our data collection programs  
10 don't have communication campaigns associated with  
11 them -- special communications. We have an  
12 ongoing one that's the whole Bureau. The 2020  
13 census does have a special communication campaign.  
14 So specifically for 2020, there would be a special  
15 communication campaign being developed.

16 Q And then we've talked a little bit about  
17 this already, but it also has to address the  
18 pretesting of the data collection instrument and  
19 supporting materials.

20 Has that been done here for the 2020  
21 census?

22 A Within the time constraints of the

1 Secretary's decision, the different components of  
2 the 2020 questionnaire have been pretested. They  
3 will get their first test in their presumed form  
4 some time after those forms are ready. It won't  
5 be an extensive field test. We have neither  
6 budget or time for that. The last chance for that  
7 was probably before March of 2018.

8 Q So for the full 2020 census  
9 questionnaire, which would include the citizenship  
10 question, has there been a waiver requested for  
11 this requirement?

12 A So -- we don't think we need a waiver.

13 Q Okay.

14 A And this is not a piece of legislation.  
15 It's operating principles for the agency. So an  
16 example for a census that would request a waiver  
17 is the economic census in 2012. The economic  
18 census is a survey-based instrument. It's not an  
19 enumeration.

20 So the standards say that when you  
21 release the data from an economic census, since it  
22 was a survey, all the data items have to be

1 accompanied by a margin of error. They weren't.  
2 So the 2012 economic census did request a waiver  
3 for that because that's a clear indication from  
4 the Census Bureau that a piece of quality  
5 information that we expect to be produced couldn't  
6 be produced.

7 In this operational context, our  
8 standards allow us to ask the professionals at  
9 Census Bureau in a consensus form, do you believe  
10 this has been adequately tested, given the time  
11 and operational and financial constraints? Our  
12 conclusion is that the citizenship question has  
13 been sufficiently tested to not require a waiver.

14 Q Okay.

15 A The Office of Management and Budget can  
16 disagree, and it can refuse the clearance package  
17 without further testing of the specific form that  
18 we intend to go to field with. That is within  
19 their authority. And were they to do that, we  
20 would, obviously, have to do something in order to  
21 come into compliance. But at the moment, we do  
22 not feel that question needs a waiver for testing

1 reasons.

2 Q So let me ask you a separate question.  
3 Secretary Ross, in his supplemental memorandum,  
4 stated that he began considering the citizenship  
5 question when he first started, and I'm  
6 paraphrasing here. If you had known that, then at  
7 that time, could the citizenship question have  
8 been added to the end-to-end testing?

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9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: If the Secretary had asked  
11 us to test the citizenship question in -- after  
12 his arrival in the Department of Commerce, we  
13 could have engineered one into the end-to-end  
14 test, yes.

15 BY MS. SHAH:

16 Q All right. I think we're done with this  
17 document for the moment.

18 We talked a little bit earlier  
19 about -- or you had talked earlier a little bit  
20 about the race and ethnicity question. And is it  
21 correct that the race and Hispanic origin or  
22 ethnicity question for the 2000 census short form

1 before the last one ends, yes.

2 Q And over the course of that time, the  
3 Census Bureau administers a series of tests to  
4 prepare for the decennial census, correct?

5 A In modern history, that's correct.

6 Q Let me clarify. I'm speaking  
7 specifically about the 2020 census as it  
8 administers a series of tests in order to prepare  
9 for the 2020 census.

10 A All right. I thought, initially, you  
11 asked me about the 2010 census. Was that question  
12 also about the 2020?

13 Q About 2020, correct.

14 A The 2020 had an associate director about  
15 the same time as the 2010 census was in the field  
16 and the office was put in place in 2012.

17 Q And now -- approximately how many tests  
18 has the Census Bureau run in order to prepare for  
19 the 2020 census?

20 A '12, '13, '14, '15, '16 and '18, six.

21 Q And some of those years, have there been  
22 multiple tests?

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1           A    We often lump them together, but yes.

2           Q    And did -- was 2017 a year where testing  
3   was conducted?

4           A    Yes.

5           Q    So, basically, every year since 2012?

6           A    Yes. -- wrong -- not 2019. There's no  
7   operational plan test. There will be testing.  
8   There's -- testing is continuous. We're talking,  
9   really, about these formal designed tests that  
10   usually have an RCT component to them, but not  
11   always.

12          Q    And why does the Census Bureau run this  
13   series of tests to prepare for 2020?

14          A    In a modern business, when you develop a  
15   tool that you're going to use for your flagship  
16   product, you're usually going to use it  
17   continuously. So in a modern business, there's a  
18   continual improvement and implement phase.

19                For the census of population, that tool  
20   is going to be used exactly once. So you can't  
21   guess how you're going to do it. You have to take  
22   the accumulated knowledge from the last times you

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1 decennial census environment might be like,  
2 correct?

3 A They help you predict the quality of the  
4 instrument and the cost of the operations to  
5 implement it and collect and process the data.

6 Q And would you agree trying to count more  
7 than 300 million people across the country is a  
8 fairly complex undertaking?

9 A Yes.

10 Q So the Census goes through these multiple  
11 years of tests in order to make sure it get things  
12 right for the 2020 census, correct?

13 A Actually, we hold ourselves to a higher  
14 standard. We like to do them better than we did  
15 them last time.

16 Q Because the decennial census is a  
17 once-in-a-decade event?

18 A It is authorized in the Constitution.

19 Q And we discussed testing, at length,  
20 earlier. Is one of the purposes that testing is  
21 used for to develop predictions about field  
22 operations?

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1           A     Yes.

2           Q     And particularly options for --  
3     operations for nonresponse follow-up?

4           A     Among other operations, yes.

5           Q     And is it okay if I refer to nonresponse  
6     follow-up as NRFU going forward?

7           A     I'll recognize it if you call it NRFU.

8           Q     Okay. Are the tests used to help  
9     project, for example, staffing levels for NRFU  
10    operations?

11          A     They're used to help refine the  
12    projections. They're usually our early on  
13    projections that are based on the most recent  
14    census and then they're refined.

15          Q     How are they refined?

16          A     So the relevant history is the post-war  
17    history of the census, and that is the era in  
18    which we moved from the primary operational mode  
19    is you send an enumerator into a space that is  
20    defined by a physical area, and you ask that  
21    enumerator to find every domicile or other place  
22    where people can live, and then after finding

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1 those domiciles, to count the number of people  
2 that are there and to collect other information  
3 about them.

4 We moved from that mode to asking the  
5 residents of the United States to supply that  
6 information for themselves in a manner that would  
7 allow us to control whether we had received  
8 information about a particular physical address.  
9 So the field operators are different in those two.  
10 There really -- it wasn't really NRFU before there  
11 was NR to follow up.

12 Q So just talking about the 2020 census,  
13 have these tests been used to project the number  
14 of NRFU enumerators that the Census Bureau may  
15 need to hire?

16 A Yes. They have been used along with  
17 other data to do that projection.

18 Q What is the other data that's been used?

19 A Historical practice, feedback from the  
20 field office and tests for the various forms of  
21 the operational control systems.

22 Q And when were those tests for the

1 operations control systems performed?

2 A So every time we do a test, there's an  
3 operational control system. So it's a component  
4 of the data that we gather in order to revise our  
5 estimates of how much effort is going to be needed  
6 at each phase of the census.

7 Q And have these tests over the last  
8 several years also been used to project the number  
9 of census offices that the Census Bureau will need  
10 to open up for the 2020 census?

11 A They have been used to revise the area  
12 census office plan, yes.

13 Q Have these tests been used to test the  
14 adequacy or the amount of training that  
15 enumerators will receive?

16 A Yes.

17 Q And have these tests been used to test  
18 NRFU -- methods of NRFU contact with households?

19 A If I rephrase your question, have they  
20 been used to test a variety of NRFU protocols and  
21 modes, yes.

22 Q Have these tests been used to -- in

1 relation to the census questionnaire assistance  
2 telephone service?

3 A Yes. Not all of them, but some of them.

4 Q Which tests have been used for that  
5 purpose?

6 A So I will have to review which of the  
7 tests included a CQA. That's what we call it,  
8 census questionnaire -- census questionnaire  
9 assistance, which is the telephone component. The  
10 end-to-end test did. The 2015 National Content  
11 Test did. I can't remember whether the 2017 test  
12 did or not.

13 In the next break -- I have notes on  
14 this. I'll just -- fleshed short-term memory, so  
15 I'm not sure. Some of them did and some of them  
16 didn't.

17 Q And is it accurate that the census  
18 questionnaire assistance service is there for  
19 people to ask questions that they might have about  
20 the 2020 census questionnaire?

21 A So the goal of the CQA is to get to the  
22 point where during what we call peak operations,

1     once we mail out the invitation to take the  
2     census, that we would be able to take a call load  
3     that would support a large proportion of the  
4     population making inquiry, expect to actually  
5     enumerate a nontrivial fraction of the household  
6     directly on the CQA.

7           Q     By enumerate, you mean get people to  
8     respond to the census over the phone?

9           A     The training for the CQA operators is to  
10    ask early on in the contact, would you like us to  
11    just do it right now, and then begin the  
12    telephone-administered instrument.

13          Q     And has the testing program for the 2020  
14    census been used to project the call load that  
15    might be expected for that peak operations period?

16          A     It has. And so has the question -- the  
17    equivalent operation for the economic census,  
18    which is a field mode.

19          Q     Has the testing program since -- the  
20    testing program for the 2020 census been used to  
21    test the role of administrative records in  
22    reducing the NRFU workload?

1           A     Yes.

2           Q     Now, for -- have any of the tests to date  
3     in the 2020 census testing program, have any of  
4     them included a citizenship question?

5           A     No.

6           Q     And so none of these tests, to the extent  
7     that they were used to project staffing levels or  
8     to refine the projections, would have accounted  
9     for the citizenship question?

10          A     Directly, no.

11          Q     Would they have done so indirectly?

12          A     Well, we used -- we didn't use evidence  
13     from a test, but we used evidence similar to the  
14     evidence generated in the test to make indirect  
15     inferences.   But directly, no.

16          Q     What was -- what were the sources you  
17     used for the indirect inferences?

18          A     These are the experiments that I  
19     described -- the natural experiments that I  
20     described in my fact witness testimony.

21                 Do you want to go through them again?

22          Q     Are those the ones discussed in your

1 January 19th memo?

2 A The ones that existed at that point in  
3 time are discussed in the memo, yes.

4 Q And since then, are there any other ones  
5 that have been done?

6 A There are more extensive ones that have  
7 been done in the full version of the technical  
8 paper that was developed after the memo was  
9 written.

10 Q Is that the document that was just  
11 produced to us yesterday?

12 A Yes.

13 Q And besides those two sources, are there  
14 any other -- let me rephrase.

15 Besides the sources discussed in those  
16 two documents, are there any other sources that  
17 you used to develop indirect inferences?

18 A They haven't been used yet, but we intend  
19 to examine the field operation data from the  
20 end-to-end test, because it occurred as the  
21 information about the citizenship question was  
22 becoming public. It's not clear how useful it

1 would be, but that would be another form of  
2 indirect inference. There was no citizenship  
3 question, but there were environmental factors  
4 that intervene.

5 Q Besides that, are there any other  
6 sources?

7 A None that I'm aware of.

8 Sorry. From our test operations.

9 Q And so to the extent that any tests  
10 conducted to date have been used to project the  
11 number of offices that the Census Bureau will open  
12 in 2020, those projections would not have  
13 accounted from the citizenship question, correct?

14 A In general, that's correct, yes.

15 Q And to the extent the tests were used to  
16 test the adequacy or amount of enumerator  
17 training, they would not have accounted for the  
18 citizenship question, correct?

19 A That's correct.

20 Q And the same question with respect to the  
21 testing of NRFU protocols. To the extent that  
22 testing has been used to test the adequacy of

1 those protocols, they would not have accounted for  
2 the citizenship question, correct?

3 A That's correct.

4 Q And the same question with respect to the  
5 census questionnaire assistance. To the extent  
6 the testing was used to develop a projection about  
7 call loads for peak operations, those projections  
8 would not account for the citizenship question,  
9 correct?

10 A That's correct.

11 Q In light of the Secretary's decision to  
12 add the citizenship question, will the  
13 Census Bureau conduct any testing on the impact of  
14 that question on staffing levels?

15 MR. EHRLICH: Objection. Form.

16 THE WITNESS: It's hard to imagine what  
17 kind of testing we might do, other than on a  
18 relatively small scale. However, we are working  
19 closely with the integrated communication  
20 campaign, which the Secretary has recommended  
21 increasing the budget to 500 million. They are  
22 developing messaging and other tools that we fully



1 randomization something -- randomization is  
2 surprisingly more expense than you realize,  
3 including me when I first got into a position  
4 where I could randomize.

5 Q Besides CBAMS, is there a specific test  
6 for which the form has been decided that the  
7 Census Bureau will undertake related to the  
8 citizenship question?

9 A Not that I'm aware of.

10 Q And when does the Census Bureau intend to  
11 make a decision about the form of these tests?

12 A So what has happened is the different  
13 components of the Census Bureau with expertise in  
14 this, have been consulting with the operational  
15 program attempting to provide them with feedback  
16 on how this kind of -- this kind of testing can be  
17 done without disrupting the timeline. That's a  
18 good question to pose at a quarterly program  
19 management review. Because when you do, then from  
20 out of the woodwork come the different ways in  
21 which that has happened. I'm not aware of any  
22 specific way in which that has happened

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1 research, yes.

2 Q And those would be resources you would  
3 have to ask the Secretary for under the  
4 contingency program you described?

5 A Under the current management of the  
6 contingency funds for the 2020 census, the  
7 Secretary has the authority to release them.

8 Q Does the Census Bureau have any plans to  
9 increase the number of census offices it will open  
10 in 2020 in light of the citizenship question?

11 A The area census office plan has not been  
12 revised.

13 Q Are there plans to revise it?

14 A Not that I'm aware of. The agency's  
15 answer to that question is no.

16 Q Is there a final date by which the 2020  
17 census questionnaire has to be finalized?

18 A The agency's answer to that question is  
19 we expect to finalize the questionnaire by June of  
20 2019, the paper form. That's the -- in current  
21 operational plan, that is the due date -- the due  
22 month for the final artwork.

1 Q And is that the date on which printing of  
2 the questionnaire will begin?

3 A When you deliver the final artwork, then  
4 the printer starts to implement it.

5 Q And is that also the same month in which  
6 you would have to finalize the Internet  
7 self-response instrument?

8 A There is more flexibility for the  
9 Internet self-response instrument. So we  
10 don't -- sorry. I'm blanking. There's an  
11 industry term for the software development system  
12 that we're using for the software components of  
13 the 2020 census, and it will come into short-term  
14 memory, but it probably will by the time I finish  
15 this answer.

16 In that timeline, what would happen if  
17 we -- in that timeline, the instrument will be in  
18 the form where we expect to be able to scale it  
19 after the sprint that ends in the middle of  
20 September. So that means that the software is in  
21 its -- in the form in which you then move into  
22 test readiness and then production. So -- but it

1 system, in the middle of next month.

2 Q Going back to the paper questionnaire,  
3 under the current budget, if there are changes to  
4 the paper questionnaire after June of 2019, would  
5 that impair the Census Bureau's ability to timely  
6 administer the 2020 census?

7 A Without appropriate funding adjustments?

8 Q Under the current cost estimates and  
9 budget?

10 A Under the cost estimates and budget, yes.

11 Q Has the Bureau developed an estimate for  
12 how much additional funding it would need to  
13 timely administer the 2020 census if the  
14 questionnaire is modified after June of 2019?

15 A We do not have well-articulated lifecycle  
16 cost estimates for such a contingency.

17 Q And for the Internet self-response  
18 instrument, is there a drop-dead date by which it  
19 has to be finalized in order to timely administer  
20 the 2020 census under current cost estimates and  
21 budget?

22 A Under current cost estimates, it should

1 citizenship question may make modifications.

2 Those modifications will have to be made  
3 relatively soon. The field operations actually  
4 start with address canvass and address canvases  
5 start next summer. So we don't have a lot of  
6 time. But the final forms of the training  
7 materials and the final onboarding of those  
8 activities hasn't happened. So we do have the  
9 scope to make modifications, and we are intending  
10 to analyze the data from the end-to-end test and  
11 other data as they became available to us in order  
12 to optimize that.

13 Q And the end-to-end didn't test  
14 citizenship, right?

15 A There was no citizenship question on the  
16 form.

17 Q And these additional data you mentioned  
18 with respect to citizenship, those are possible  
19 small scale tests that the Census might do, right?

20 A What I said was that the focus groups  
21 from CBAMS were small scale tests and the in place  
22 testing of instruments would necessarily be small

1 can be used to enumerate a household after just  
2 one household visit?

3 A Yes. There are multiple cutoff criteria  
4 that have been honed over the course of the decade  
5 and will probably be honed again from the  
6 end-to-end test.

7 Q And none of those tests have been used to  
8 hone these quality requirements, including the  
9 citizenship question, correct?

10 A That's correct.

11 Q What proportion of the NRFU population do  
12 you expect can be enumerated through  
13 administrative records?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: In the current lifecycle  
16 cost estimate -- I'm going to check this on the  
17 break, because I actually know this is true for  
18 Version 2 but I'm not sure it's true for Version 3  
19 -- that was 6 million households we expected to be  
20 able to enumerate with ad recs.

21 BY MR. TILAK:

22 Q Has any research been done on the

1 differential availability or quality of these  
2 records for households with noncitizens compared  
3 to the U.S. population generally?

4 A The research that has been done is  
5 germane to that question, not necessarily because  
6 it's specifically looking at a citizenship  
7 variable, but one of the things that matter is  
8 quality of the personal identifying information in  
9 the ad recs. And people who file income tax  
10 returns on time, in particular, are much more  
11 likely to have useable PII. And that PII is the  
12 language we were talking about in the early part  
13 of this deposition verified -- it's audited by the  
14 Internal Revenue Service. So we know the  
15 characteristics of that subpopulation are much  
16 more likely to be citizens, but that's not  
17 specifically using the citizenship variable. It's  
18 just announcing that a characteristic of the way  
19 we created the administrative record eligible  
20 enumerations is going to favor citizens.

21 Q So these indicative --

22 A I didn't mean favor. I'm very

1 sensitive -- is going to more likely select  
2 citizens.

3 Q So is that indicative that administrative  
4 records meeting the Census Bureau's quality  
5 requirements are more likely to exist for citizens  
6 than for noncitizen households?

7 A They are more likely to exist for persons  
8 who file -- persons and households that file an  
9 income tax return, and that is more likely to be  
10 the case for higher income people who are more  
11 likely to be citizens.

12 Q How about for racial and ethnic  
13 minorities, for example, Hispanics?

14 A So this is the reason why we use Medicare  
15 records, because that -- that is nearly exhaustive  
16 for the population over age 65. But, again, it's  
17 only if you have a Social Security number that  
18 you're going to be eligible. So you have to be  
19 eligible for social benefits in the United States,  
20 and some noncitizens are and they're going to be  
21 in those records. They're also often eligible for  
22 State programs. And we did a plan to assemble



1 State records, but that's what's been evaluated  
2 before we finalize which kinds of records we're  
3 going to use.

4 We're making a push to require SNAP  
5 records, Supplemental Nutrition Assistance Program  
6 records, and we don't have them for every state,  
7 and we need to make a decision about whether --  
8 sufficiently complete that we will go forward.  
9 That decision hasn't been made.

10 Q Returning, briefly, to proxy enumeration.  
11 Will the default of three visits before proxy  
12 eligibility apply across the country?

13 A It -- well, the answer is in the current  
14 design, yes. But then I will say, again, that  
15 field staff have the authority from the very first  
16 visit to pile on, so they -- they can redeploy  
17 enumerators if they -- for example, if they  
18 deployed one early on in the process and our  
19 quality evaluation of that enumerator's work is  
20 going to cause that enumerator not to get any more  
21 work, the field staff can redo some of that.

22 And we do continuous quality control on a

1 sample, so that's going to involve additional  
2 visits, as well.

3 The six visits is the operational  
4 guideline and the training and the expectation,  
5 but the discretion of the field staff and the  
6 discretion of the operational staff back at the  
7 census headquarters can modify that, even if the  
8 protocol was not officially modified.

9 Q And to date, are there any guidelines for  
10 varying the number of visits before proxy  
11 eligibility?

12 A I believe that there are not, but I  
13 believe that will be part of the end-to-end test  
14 evaluation, whether we should modify that.

15 Q And, again, end-to-end did not include  
16 the citizenship question, correct?

17 A That's correct.

18 Q Dr. Abowd, in the memos that you wrote --  
19 is that correct?

20 A That I supervised the preparation of.

21 Q That you supervised the preparation of,  
22 is it accurate that you found evidence of a lower

1 alternative estimates of the total population.  
2 One is developed by what's called demographic  
3 analysis and we only do that at a national level,  
4 although we do have some subnational controls in  
5 the demographic analysis, and the other is done by  
6 the dual-system estimation and we -- in the  
7 1990s -- for the 1990 census and for the 2000  
8 census, we did attempt to implement a dual-system  
9 estimation that would be capable of doing accurate  
10 dual-system estimation below the state level. But  
11 our current dual-system estimator is only accurate  
12 at the national. The state level estimates for  
13 the dual-system estimator are what statisticians  
14 call synthetic, what econometricians call  
15 estimated.

16 Q And earlier you had said that the ability  
17 to abate the undercount depends on the energy and  
18 efficacy of nonresponse follow-up; is that right?

19 Has the Census Bureau developed a budget  
20 of how much it would need to increase its  
21 nonresponse follow-up to address any decline in  
22 self-response as associated with the citizenship

1 question?

2 A So we have not yet formally modified any  
3 budgets. The \$91.2 million estimate that I gave  
4 you earlier is our current -- we should start  
5 there, because that's a conservative estimate. It  
6 assumes that households that are all citizens are  
7 going to respond the same way they would have  
8 responded in earlier surveys, and they may not be  
9 true either.

10 Q Yeah. What is the basis for that  
11 assumption, that households will respond in the  
12 same way as before?

13 A In social science, that's called the  
14 counterfactual. There's no basis for it. I state  
15 it because that's a maintained hypothesis that the  
16 other -- the hypothesis under test can be compared  
17 to. So if you don't make an assumption about the  
18 component of the hypothesis that you can't test,  
19 you can't interpret the component of the  
20 hypothesis you can accept in a randomized  
21 controlled trial.

22 So in a natural experiment, you have to

1 accept which things you can estimate and which  
2 things you have to make a hypothesis on. So  
3 making the hypothesis that households that contain  
4 all citizens won't change their response behavior,  
5 it's not making the prediction that they won't  
6 change their response behavior. It's allowing you  
7 to interpret the 5.1 percentage points or now it's  
8 5.8 percentage points, and apply to a larger base  
9 in a proper manner. That's why I say it's  
10 probably an underestimate, because it's probably  
11 not a reasonable hypothesis that the households  
12 that are all citizens won't change their behavior,  
13 but we don't have any evidence.

14 Q So it's your view that that's not a  
15 reasonable hypothesis but it's the assumption?

16 A It's not a reasonable projection, let me  
17 say that.

18 Q But it's the assumption that you had?

19 A It's not a reasonable projection. It is  
20 the assumption in that analysis for the purposes  
21 of generating that budget number.

22 Q And if it's not a reasonable hypothesis,

1 is it a reasonable assumption?

2 A Sorry. You keep changing my words. I  
3 keep changing them back. I said you have to make  
4 a hypothesis, and it's the one we made. It's not  
5 a reasonable projection. That is to say, if you  
6 ask us collectively do we think that the  
7 self-response of all citizen households is going  
8 to stay changed in an environment where a  
9 controversial citizen question is on the census,  
10 we would say no, we expect that their cooperation  
11 would be expected, too. But we don't have any  
12 scientific evidence to do the sign or the  
13 magnitude of that, and we can't rule out the  
14 hypothesis that they would be more cooperative.

15 Q Is there any empirical evidence that they  
16 would be more cooperative, that you're aware of?

17 A I'm not aware of any empirical evidence  
18 for either side of it. I have consistently said  
19 that it was maintained or a counterfactual  
20 hypothesis for the purposes of interpreting the  
21 coefficients that you can estimate, and I've now  
22 said that it's not a reasonable projection, okay,

1 Q But no final decision has been made?

2 A No.

3 Q When does the Census Bureau expect to  
4 make a final decision?

5 A A necessary condition for a final  
6 decision is to have the processing software that  
7 the various files must move through in order to  
8 produce final estimates in place, and it's not.  
9 It will be in place -- it's not off schedule. It  
10 will be in place as the rest of the end-to-end  
11 test is completed. And then when you have that in  
12 place, you can actually start testing these things  
13 in the operational environment. They're currently  
14 being tested in a research environment, and that  
15 research has been going on for more than a decade.

16 Q Has any of that research looked at the  
17 accuracy of whole person substitutes for  
18 noncitizen households versus the rest of the U.S.  
19 population?

20 A No.

21 Q Has any of that research looked at the  
22 accuracy of whole person substitutes for other

1 hard-to-count communities as compared to the U.S.  
2 population?

3 A The research that was done with the 2010  
4 Census Coverage Measurement studies included  
5 analyses of the components of the year-end census  
6 by characteristics like the ones you just recited.

7 Q And that's the G1 --

8 A That's the G series.

9 Q The G series may help us, okay.

10 Has the Census Bureau decided what  
11 geographical unit will be used for whole person  
12 substitutions?

13 A I'm not sure I know what the question  
14 means.

15 Q In general, when imputation is done -- or  
16 substitution is done, does that rely on records  
17 from surrounding communities?

18 A The hot-deck imputation algorithms that  
19 were in place for the 2000 and 2010 census did use  
20 nearby records. Statistical imputation systems do  
21 not have to.

22 Q Is that still the plan for 2020?



1           A     There is no plan for 2020. That is among  
2     the candidate algorithms.

3           Q     So no final decision has been made?

4           A     That's right.

5           MR. TALIK: If we could go off the record  
6     and take a short break.

7           VIDEOGRAPHER: This is the end of  
8     Media Unit Number 4. The time on 3:40 p.m. and we  
9     are off the record.

10          (Off the record.)

11          VIDEOGRAPHER: This begins Media Unit  
12     Number 5. The time on the video is 4:04 p.m. We  
13     are on the record.

14     BY MR. TILAK:

15           Q     Dr. Abowd, is there any empirical  
16     evidence that someone who chooses not to respond  
17     to this 2020 census because of the citizenship  
18     question would respond in a face-to-face  
19     interaction with a census enumerator?

20           MR. EHRLICH: Objection. Form.

21           THE WITNESS: Not that I'm aware of.

22     BY MR. TILAK:

1 Q And if that household doesn't respond,  
2 census enumerator would then try to find a proxy,  
3 correct?

4 A That's correct.

5 Q And is there any empirical evidence on  
6 the accuracy of proxy enumerations for areas with  
7 large noncitizen populations compared to the rest  
8 of the United States?

9 A Only indirect.

10 Q And what is that indirect evidence?

11 A That evidence that's in the technical  
12 reports that you've seen.

13 THE WITNESS: The evidence that's in the  
14 technical reports that you have seen.

15 BY MR. TILAK:

16 Q And if a proxy is not found, the census  
17 could then also use administrative records to  
18 enumerate the household, correct?

19 A The census may use administrative records  
20 whether or not a proxy respondent is found.

21 Q But based on your earlier testimony, the  
22 characteristics of the administrative records are

1 such that there are more likely to be  
2 administrative records for citizens compared to  
3 noncitizens?

4 A I think that's a reasonable hypothesis.  
5 I don't actually have any empirical data to  
6 support it.

7 Q And this, finally, this whole person  
8 imputation, is there any empirical evidence on the  
9 accuracy of a whole person imputation for  
10 noncitizen households versus the U.S. population?

11 A So whole person substitutions and whole  
12 person imputations are not very accurate. We've  
13 documented that for multiple censuses, but we  
14 documented it most carefully for the 2010 census  
15 where we explicitly looked at it. We know that.

16 Q And so you would agree that --

17 A We don't count them as correct  
18 enumerations, because we require that the  
19 characteristics be correct, not just the count.

20 Q So you would agree with all the censuses  
21 procedures to try to enumerate a household, some  
22 people are always missed in the decennial census?

1           A    If the question to me is do we  
2   acknowledge that some people are always missed in  
3   a census, the answer is yes.   Some people are also  
4   counted twice.

5           Q    And those would be erroneous  
6   enumerations, correct?

7           A    So one's omissions and the other is  
8   erroneous enumerations, yes.

9           Q    I'd like to have this marked as  
10   Exhibit 17.

11                   (Plaintiffs' Exhibit 17, G series  
12   documents, was marked.)

13   BY MR. TALIK:

14           Q    Dr. Abowd, do you recognize this  
15   document?

16           A    Yes. I was looking for the number, it's  
17   G4.

18           Q    Is this one of the G series documents we  
19   spoke about earlier?

20           A    Yes, it is.

21           Q    If I could just refer you to Page 1 of  
22   the executive summary, and the last full paragraph

1 don't know its order of magnitude.

2 Q Would you agree that the undercount is  
3 differential between different subpopulations in  
4 the United States?

5 A We have documented that the net  
6 undercount is differential.

7 Q And are hard-to-count populations  
8 specifically likely to be undercounted  
9 differentially compared to the rest of U.S.  
10 population?

11 A That's almost tautological. When we  
12 label a subpopulation hard-to-count, one of the  
13 indicators we use is its net undercount.

14 Q Let's next turn to Page 9, and the  
15 last -- the paragraph, it says, "The black alone  
16 or in combination and the Hispanic populations had  
17 a larger percent omissions than the non-white  
18 Hispanics" --

19 A Sorry. Sorry. You got there too fast.  
20 Point.

21 Q It's the second paragraph.

22 A Got it. Okay.

1 Q "The black alone or in combination and  
2 Hispanic populations have larger percent  
3 omissions, 9.3 percent and 7.7 percent,  
4 respectively, than the nonwhite -- non-Hispanics  
5 white-alone population."

6 Is it accurate that the census's  
7 enumeration procedures are more likely to the  
8 Hispanics -- members of the Hispanic population  
9 compared to the non-Hispanic white population?

10 A I think the answer to that question is  
11 yes, but I would not use the information in this  
12 table to answer that question. I would use the  
13 information in the net undercount table, which  
14 is -- it might not be in this report, but there's  
15 a summary in G01.

16 Q Got it.

17 And then turning to Page 17, this refers  
18 to -- refers to bilingual mailing areas. Are  
19 bilingual mailing areas where the population is  
20 likely to have limited English proficiency?

21 A So bilingual mailing areas for the 2010  
22 census would have been predicted from the 2005 to

1 2009 language questions in the American Community  
2 Survey. So they're indicators of households that  
3 speak more than one language.

4 Q And, again, the omission percentage for  
5 bilingual mailing areas in Table 9 is 7.3 percent  
6 compared to 5.3 percent for the U.S. total. Is it  
7 accurate that the census's enumeration procedures  
8 are more likely to miss people living in bilingual  
9 mailing areas compared to the U.S. population,  
10 generally?

11 A I'll correct your question. If you mean  
12 gross omissions, that's what the table describes.  
13 If you meant net undercount, you can't get that  
14 from this table.

15 Q What table would you refer to for that?

16 A If we have a net undercount estimate, it  
17 would be in one that is labeled net undercount  
18 as -- or percentage net undercount, one of those  
19 two. I don't know -- I don't know the contents of  
20 all of those G series reports. They're summarized  
21 in G01.

22 Q If I can refer you to the column just to

1 the left of omissions percentage undercount, is  
2 that the net undercount?

3 A Thank you. Thank you.

4 Q And is the Number .80 for bilingual  
5 mailing areas?

6 A Yes.

7 Q And the asterisk indicates that it's  
8 statistically significant, correct?

9 A At the 90 percent level, yes. That's  
10 correct.

11 Q And so given that information, is it more  
12 likely that the census's enumeration procedures  
13 would miss people living in bilingual areas  
14 compared to the U.S. population?

15 A Yes. That's what a positive differential  
16 net undercount is.

17 Q And then going back to Page 9 on Table 2,  
18 which we were at earlier.

19 A Was there one there, too, and I missed  
20 it? Yes, there was. Okay.

21 Q If we look at the bottom of Table 2, the  
22 net -- the percent undercount is 1.54 percent?



1           A    Yes.

2           Q    And that's statistically-significant --

3           A    Yes.

4           Q    -- compared to the U.S. population?

5                So with that information, is it more  
6   likely that the census's enumeration procedures  
7   will miss members of the Hispanic population  
8   compared to population --

9           A    There's a differential net undercount for  
10   Hispanics, yes.

11           Q    Now, this is all for the 2020 census.  
12   Does the Census Bureau expect not to have a  
13   differential undercount of Hispanics for the 2020  
14   census?

15               MR. EHRLICH:  Objection.  Form.

16               THE WITNESS:  The Census Bureau expects  
17   to improve its net undercount performance every  
18   census and targets the populations that had  
19   previous net undercounts for special attention.  
20   Sometimes with tests that have been demonstrated  
21   to be more effective and sometimes with  
22   advertising campaigns that have looser empirical

1 with the Voting Rights Act and to do the scrutiny  
2 of that compliance.

3 Q So it has been required since 1965 when  
4 the Voting Rights Act was passed?

5 A So this is why I say these are -- these  
6 are fluid. It -- tabulations from the long form  
7 were used when they started to be -- they weren't  
8 available in the 1960s, because we didn't ask the  
9 question in 1960 on the long form. So we did ask  
10 it again on this long form in 1970s and  
11 tabulations were produced of citizenship  
12 population, I believe. I don't have specific  
13 knowledge of how they were used in the '70s but I  
14 believe used like the Citizen Voting Age  
15 Population tabulations that we now produce.

16 Q And that the Census Bureau has been  
17 producing for decades?

18 A When we collect data on citizenship, we  
19 produce statistical products based on those data.

20 Q So you mentioned the advisory committees  
21 just a moment ago. What is the role of the  
22 advisory committees with respect to the decennial

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1 census?

2 A So the Census Bureau is an agency that  
3 benefits from three advisory committees, the CSAC,  
4 the Census Scientific Advisory Committee, the  
5 National Advisory Committee on Race, Ethnicity and  
6 Other Populations, and the Federal Economic  
7 Statistics Advisory Committee, so they're usually  
8 called CSAC, NAC and FESAC.

9 I'm going to do FESAC really quickly.  
10 It's chartered in the Department of Commerce but  
11 it advises the Census Bureau, the BLS, the Bureau  
12 of Labor Statistic, and the Bureau of Economic  
13 Analysis, BEA, primarily about economic products,  
14 but the census of population would be a subject  
15 that would be presented to them on which we might  
16 ask their advice and they do get updates on it as  
17 well as other products.

18 But they focus on economic products, and  
19 although they're chartered in Commerce, the BLS is a  
20 full partner.

21 The other two, CSAC and NAC, are  
22 chartered in the Department of Commerce for the

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1 benefit of the Census Bureau, and they are  
2 advisory committees under the Federal Advisory  
3 Administrative Committee, FACA. So they operated  
4 according to the FACA rules. The nomination  
5 procedure has to be public. Because they're  
6 chartered in Commerce, Commerce determines the  
7 membership. The agenda has to be public. The  
8 meetings have to be public. There has to be a  
9 public comment period.

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10 But, generally, they are for our benefit  
11 in the sense that we actively seek to put on those  
12 advisory committees people and representatives or  
13 organizations who can be helpful in the scientific  
14 committee on many different technical issues in  
15 the National Advisory Committee on the full gamut  
16 of issues, in particular, for the census --

17 Q Sure.

18 A -- not just the one in 2020, that has  
19 been a source of advice and outreach to many of  
20 the populations that we -- that it's important to  
21 have partnerships with when you collect the data.

22 Q So is it fair to say that the

1 Census Bureau typically consults with CSAC and the  
2 NAC about significant changes to the decennial  
3 census?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: It is correct to say that  
6 we regularly consult with CSAC and the NAC about  
7 the ongoing operations of all our major  
8 statistical programs and some of our not-so-major  
9 statistical programs.

10 BY MS. GOLDSTEIN:

11 Q And that includes the census?

12 A That includes the census.

13 Q Do you know the dates of the NAC  
14 committee -- withdrawn.

15 Was the NAC consulted about the  
16 citizenship question prior to the March 26th  
17 decision by Secretary Ross?

18 A With your permission -- are you going to  
19 ask me the same question about CSAC?

20 Q I will.

21 A I'm sorry?

22 Q I will.

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1           A    Can I do them at the same time?   It will  
2   be easier.

3           Q    Please.

4           A    So both NAC and CSAC meet twice a year on  
5   an approximately September/March schedule.   So  
6   when they met for what they call the fall meeting  
7   of 2017, there was nothing in the air.   And when  
8   they met for the spring meeting, in the case of  
9   CSAC, the Secretary had just announced his  
10   decision.   And in the case of NAC, the Secretary's  
11   decision had been out for, I believe, about a  
12   month, but nothing in the administrative record  
13   had been released yet.   So for both of those  
14   spring meetings, we had what I think we would all  
15   characterize in the Census Bureau a very awkward  
16   meeting.

17           Had the question been before us long  
18   enough, we would certainly have consulted with  
19   them.   And because the entire decision-making  
20   process was compressed into a few months, we did  
21   not.   And we did not have working groups in place  
22   that we thought we could effectively use in

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1 preparing the materials that the Secretary relied  
2 upon for his decision.

3 Q So I just want to make sure I understand,  
4 that if the Census Bureau had had adequate time,  
5 you would have consulted the NAC regarding the  
6 citizenship question proposal?

7 A Yes.

8 Q And if the Census Bureau had had adequate  
9 time, you would have consulted the --

10 A CSAC.

11 Q -- CSAC about the citizenship question?

12 A Yes.

13 Q And if the Census Bureau had had adequate  
14 time, you would have convened working groups at  
15 these advisory committees to study the citizenship  
16 question?

17 A We might have, yes. It would have been  
18 actively discussed.

19 Q Now, recognizing that these committees  
20 did not have an opportunity to weigh in prior to  
21 the Secretary's decision, following that decision,  
22 did these committees at your awkward meetings

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1 to be marked as Plaintiffs' Exhibit 21.

2 (Plaintiffs' Exhibit 21, 2020 census  
3 integrated communication plan, was marked.)

4 MS. GOLDSTEIN: And this is a 208-page  
5 document, and so I only printed a couple copies.  
6 My apologies to the world and counsel.

7 BY MS. GOLDSTEIN:

8 Q This is document entitled 2020 census  
9 integrated communication plan. As I mentioned,  
10 209-page [sic] version. This is version 1.1 dated  
11 6/2/2017.

12 Do you recognize this document?

13 A Yes.

14 Q What is this?

15 A This is one of the many plans that the  
16 2020 census releases periodically to supply  
17 transparent detailed information about the  
18 planning and operations of the 2020 census.

19 Q And is another version of this document  
20 planned?

21 A So I've been asking about these  
22 throughout the day but I didn't ask about this



1 to revise the plan as a consequence of what we  
2 learned there.

3 Q Why did you not have a communications --

4 A Component.

5 Q -- component in the end-to-end test?

6 A It was not sufficient --

7 (Thereupon, the court reporter  
8 clarified.)

9 THE WITNESS: There was not sufficient  
10 budget.

11 BY MS. GOLDSTEIN:

12 Q So if you can turn to Page 7 of this  
13 plan, and if you go down to Bullet Point 1,  
14 "Detail the research and database approach: A  
15 successful campaign must be based on a solid  
16 foundation of research and have strong internal  
17 systems for collecting and analyzing data to  
18 optimize performance."

19 Do you agree with this statement?

20 A Yes.

21 Q And given the timing of when the  
22 citizenship question was added, is there a solid

1 foundation of research that informs the  
2 communication plan -- the communication planning  
3 process about the citizenship question and its  
4 implications?

5 A No.

6 Q And are there stronger internal systems  
7 for collecting and analyzing data to optimize  
8 performance, given the recent addition of the  
9 citizenship question?

10 A So we have tried to optimize performance  
11 by using the instruments that we have available to  
12 us, and there are additional planned task orders  
13 for this communication, the integrated  
14 communication contract, that will involve  
15 additional collection of data, realtime tracking  
16 data, both survey-based and other ways. So there  
17 are definitely plans to collect data, and they  
18 will be checked with -- with the census design as  
19 it exists today in mind. So they will be fully  
20 cognizant of the citizenship question.

21 Q Is it fair to say that the late addition  
22 of the citizenship question will make it harder to

1       that process a little bit more difficult --

2           A     Yes.

3           Q     -- fair to say?

4           A     Yes.

5           Q     Okay. So let's go to Page 37, and if you  
6       go one, two, three, four, bullet points down,  
7       "With young children having a highest net census  
8       undercount rate than any other age group, Hispanic  
9       children account for more than 36 percent of the  
10      total net undercount for all children younger than  
11      five."

12                Did I read that correctly?

13           A     Yes.

14           Q     So there is a -- prior to any addition of  
15      the citizenship question, the Census Bureau has  
16      recognized that there is a net undercount for  
17      Hispanic children, correct?

18           A     Yes.

19           Q     Is it fair to say that the NRFU -- NRFU  
20      efforts that the Census Bureau puts in place are  
21      less effective with respect to this population?

22                MR. EHRLICH: Objection. Form.

1 THE WITNESS: So these are estimates  
2 based on the 2010 census coverage measurement  
3 program.

4 BY MS. GOLDSTEIN:

5 Q Sure.

6 A So they were in an environment -- a  
7 different political environment and a  
8 questionnaire without a citizenship question on  
9 it. And this identification of children, age zero  
10 to four, this is the first time that that had  
11 popped out as such a large net undercount.

12 There's a couple of possible reasons for  
13 that. Our demographic data -- so one of the  
14 things we would measure against better now are for  
15 that age group because of accuracy of birth  
16 records. So we have, consistently, throughout  
17 this decade, focused on ways in which we can  
18 improve our undercount. The -- the end-to-end  
19 test does have a coverage evaluation component,  
20 but it wasn't structured to provide statistical  
21 information. So we have only the direct analysis  
22 of the test to see if we have improved it.

1 I don't want to say it's a crap shoot. I  
2 think that there is solid evidence that design  
3 changes that have been made, particularly queues  
4 and reminders, and these are actually easier to do  
5 on the Internet self-response instrument than on a  
6 paper instrument, because you can blow by the  
7 reminders and the queues on the paper one, but  
8 it's harder to blow by the ones on the Internet  
9 instrument, too, but it's harder to because of the  
10 way it's structured. So we put some considerable  
11 effort --

12 BY MS. GOLDSTEIN:

13 Q Sure.

14 A -- into trying to alert people who have  
15 answered someplace else on the form, correlates to  
16 there might be a young -- an uncounted person here  
17 on this, but we don't have the statistical  
18 evidence to back up a claim that that will reduce  
19 the net undercount. We have the statistical  
20 correlates to suggest it might.

21 Q Is it possible that the presence of the  
22 citizenship question on the decennial census will

1 exacerbate this kind of net undercount of Hispanic  
2 children?

3 A Yes. That is what we mean when we say  
4 the quality of the census count will be harmed.

5 Q Let's go to Page 53. And I just want  
6 to -- you got -- direct you to the very last  
7 paragraph in bold. Leading up to the 2020 count,  
8 all communication elements, including advertising,  
9 earned media, collateral and other items designed  
10 for public dissemination will be pretested and  
11 refined.

12 Has that process happened yet?

13 A I'm sure that some parts of that process  
14 have happened already. But a systemic part of it  
15 would have been part of the 2018 end-to-end test  
16 and so -- yeah, at the point at which this plan  
17 was written, I believe -- I get my budget years  
18 and my calendar years -- I believe -- we were  
19 still in fiscal 2017. The full design for the  
20 end-to-end test was still on the table. That was  
21 the three site and it included a media campaign.  
22 So those comment components were not done.

1           The other components that are part of the  
2 integrated communication contract and the ongoing  
3 activities of the decennial census were done.

4           Q   Earlier you testified that the political  
5 environment can affect response rates, correct?

6           A   I know I just said political. I've been  
7 trying very hard to say macroenvironment. If  
8 you'll give me leave to say macroenvironment,  
9 that's what I meant.

10          Q   And one of the things that goes into  
11 macroenvironment is the political context, fair to  
12 say?

13          A   That's fair to say. But another thing  
14 that goes into it is the state of the economy.

15          Q   Absolutely.

16                So let's say -- so would you -- you've  
17 also testified that the macroenvironment can  
18 affect the efficacy of NRFU, correct?

19          A   Correct.

20          Q   Is there -- is it possible that the  
21 presence of a citizenship question will exacerbate  
22 those effects?

1           A    It's certainly possible, yes.

2           Q    Does the Census Bureau believe that that  
3   is likely?

4           A    So what we believe is likely is that  
5   we're going to need more intensive nonresponse  
6   follow-up than the baseline lifecycle cost  
7   estimate.   One of our big concerns -- macro  
8   concerns is when you ramp up the NRFU, you have to  
9   hire the planned number of enumerators so that  
10   they're available to deploy.   If you discover one  
11   week into NRFU that you're short of enumerators,  
12   the six- to seven-week onboarding process defeats  
13   you.

14                So let me just say there are many  
15   professionals at the Census Bureau painfully aware  
16   of the consequences of not being able to onboard  
17   enough enumerators.   As I understand it, we had to  
18   ask for a budget supplement in 1990 because of  
19   difficulties onboarding.

20                We had the best possible macroenvironment  
21   for conducting a census in this regard in 2010,  
22   for all the wrong reasons, but, nevertheless, it



1 was extraordinarily easy to onboard very good,  
2 quality enumerators.

3 So in terms of macroenvironment,  
4 we're -- the red lights are flashing around can  
5 you hire enough enumerators? And the cost  
6 estimate is designed -- assuming that we can, if  
7 we can, then where the extra cost from the  
8 nonresponse follow-up might be caused by the  
9 citizenship question will come from having to  
10 deploy them more intensively than we had planned.

11 Q And it's fair to say that there are  
12 aspects of the macroenvironment currently that are  
13 making it difficult to hire as many enumerators as  
14 the Census Bureau needs?

15 A So I don't have to hypothesis, we had  
16 difficulty hiring enumerators in Rhode Island for  
17 the test.

18 Q And you expect that problem to be the  
19 case for the -- as you attempt to onboard more  
20 enumerators, correct?

21 A I would say we used that experience  
22 to -- as an opportunity to revisit some components

1 of that recruitment plan.

2 Q But it's fair to say that the low levels  
3 of unemployment right now will make it more  
4 difficult to hire enumerators?

5 MR. EHRLICH: Objection. Form.

6 THE WITNESS: It's fair to say it will  
7 make it more expensive to hire enumerators. And  
8 if that's not acknowledged, then it will make it  
9 more difficult to hire enumerators.

10 BY MS. GOLDSTEIN:

11 Q So, previously, you testified about the  
12 work that Young & Rubicon was retained to do,  
13 correct?

14 A So I testified about the work of the  
15 integrated communication contract for which Y&R is  
16 the lead contractor.

17 Q Have they done attitudinal studies on the  
18 citizenship question as part of that contract?

19 A I do not know whether they have done  
20 them. I do know that they are being actively  
21 discussed.

22 Q And has Reingold performed attitudinal

1 from those studies.

2 MS. GOLDSTEIN: Can I have this marked,  
3 please?

4 (Plaintiffs' Exhibit 22, OMB standards  
5 and guidelines for statistical surveys, was  
6 marked.)

7 BY MS. GOLDSTEIN:

8 Q Actually, before I get to this, you had  
9 testified at your previous deposition regarding  
10 Census's statutory charge to seek alternative  
11 sources for information before asking a question  
12 of the population.

13 Where does that statutory charge come  
14 from?

15 A Yeah. In Title 13 -- I'm sorry, I can't  
16 identify the clause -- we are instructed to use  
17 administrative records and other sources of data  
18 before attempting to gather the data by direct  
19 instrument. That's a paraphrase, but that is  
20 certainly the way we interpret that clause in the  
21 Title 13.

22 Q And that is a well-established

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1 Census Bureau practice, correct?

2 A Correct.

3 Q I'm handing you what has been marked as  
4 Plaintiffs' Exhibit 22. It is a copy of the  
5 standards and guidelines for statistical surveys,  
6 September 2006, from the Office of Management and  
7 Budget.

8 Do you recognize this document?

9 A I think your handed me SPD2.

10 Q I think that's the shorter way to say it,  
11 yes.

12 A Okay.

13 Yes. I do.

14 Q The Census Bureau is obligated to comply  
15 with the standards set forth in this document,  
16 correct?

17 A Yes. That's right.

18 Q I'm going to ask you to turn to Page 11  
19 of this document, Standard 2.3. "Agencies must  
20 design and administer their data collection  
21 instruments and methods in a manner that achieves  
22 the best balance benefit maximizing data quality

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1 and controlling measurement error" --

2 A I'm sorry. I started reading -- 2.3.

3 Q I'm sorry?

4 A I was down in the guidelines. Go ahead.

5 Yes, I've got it. Go ahead.

6 Q -- "controlling measurement error while  
7 minimizing respondent burden and cost."

8 Now, at prior depositions, we have looked  
9 at the many Census Bureau memoranda that your team  
10 of experts put forth, and the Census Bureau has  
11 concluded that Alternative D resulted in lower  
12 quality data than Alternative C, correct?

13 A Yes.

14 Q And Alternative D has a higher respondent  
15 burden than Alternative C, correct?

16 A Yes.

17 Q And Alternative D has a higher cost than  
18 Alternative C, correct?

19 A Yes.

20 Q And I believe you've testified previously  
21 that no decision has yet been made on whether or  
22 not the Census Bureau will use the self-response

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1 data gathered pursuant to a citizenship question;  
2 is that correct?

3 A I believe I said that no decision has  
4 been made on how the Census Bureau will process  
5 the respondent data into the final record of the  
6 2020 census and use the respondent data and the  
7 administrative data in producing a CVAP table.

8 Q And one possibility that you raised at  
9 your deposition was to implement  
10 Alternative D -- "One way to" -- I'm reading from  
11 your deposition, "One way to implement  
12 Alternative D is to conduct Alternative B, ignore  
13 it and do Alternative C."

14 Correct?

15 A That is one way to implement  
16 Alternative D, yes.

17 Q So one possibility that the team of  
18 experts is considering is to conduct  
19 Alternative B, ignore it and do Alternative C; is  
20 that correct?

21 A It's more nuance than that. One  
22 possibility they're considering is how to do a

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1 Q Lawyers have the same problem.

2 But it is still the case that today, no  
3 conclusion has been reached, correct?

4 A That's correct. Yes.

5 Q If the Census Bureau does not make  
6 use -- if the Census Bureau concludes that the  
7 self-response data from the citizenship question  
8 should be disregarded with respect to the ultimate  
9 processing of the response data, would that use  
10 minimize response -- respondent burden --

11 A No.

12 MR. EHRLICH: Objection. Form.

13 THE WITNESS: No.

14 BY MS. GOLDSTEIN:

15 Q Alternative D has a higher respondent  
16 burden than Alternative C, correct?

17 A Yes.

18 MS. GOLDSTEIN: May I have one more  
19 exhibit, please?

20 (Plaintiffs' Exhibit 23, Secretary Ross  
21 decision memo, was marked.)

22 BY MR. HO:

1 Q I'm going to show you what has been  
2 marked as Plaintiffs' Exhibit 23. This is the  
3 decision memo from Secretary Ross dated  
4 March 26, 2018 that begins at Bates stamp 1313,  
5 and I'd like you to just turn to Page 1317.

6 So I'd like to direct you to the last  
7 half of the top paragraph on this page. The  
8 sentence that begins "Finally."

9 A Yes.

10 Q "Finally placing the question on the  
11 decennial census and directing the Census Bureau  
12 to determine the best means to compare the  
13 decennial census responses with administrative  
14 records will permit the Census Bureau to determine  
15 the inaccurate response rate for citizens and  
16 noncitizens alike using the entire population."

17 Has that statement been evaluated by the  
18 Census Bureau?

19 A As a statement of fact, that statement is  
20 correct.

21 Q Okay. "This will enable the  
22 Census Bureau to establish, to the best of its

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1 ability, the accurate ratio of  
2 citizen-to-noncitizen responses to impute for that  
3 small percentage of cases where it is necessary to  
4 do so."

5 How does adding a question -- a  
6 citizenship question to the census and determining  
7 the incorrect response rate for citizens and  
8 noncitizens who respond help the Census Bureau  
9 impute with respect to folks who do not respond at  
10 all and who do not have administrative records?

11 A The Census Bureau did not write that  
12 sentence, so I suggest you ask the Secretary what  
13 he meant by it.

14 Q Well, let me back -- let me ask the  
15 question a slightly different way.

16 Do you agree that this will enable the  
17 Census Bureau to establish, to the best of its  
18 ability, the accurate ratio of citizen to  
19 noncitizen responses to impute for that small  
20 percentage of cases where it is necessary to do  
21 so?

22 A The Census Bureau does not yet have a

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1 responses to the Secretary, that indicated that  
2 that is the methodology that we would use to  
3 produce the CVAP table. We were, in fact, very  
4 careful to say that we hadn't yet finalized a  
5 methodology to do that, especially in the presence  
6 of multiple responses for the same -- what we'd  
7 call indicator.

8 Q So is it fair to say that at the very  
9 least, it is premature to say that this ratio will  
10 help the Census Bureau establish, to the best of  
11 its ability, an accurate ratio that will help you  
12 to impute for that small percentage -- for that  
13 whatever it is percentage of cases where it is  
14 necessary to do?

15 A Speaking on a purely statistical basis,  
16 having population data of self-responses and  
17 population data of administrative responses does  
18 contribute to more accurate statistical analysis.

19 As to how they would be used to impute  
20 the problematic cases in either direction, that is  
21 not yet determined.

22 Q And this is complicated by the

1 significant inaccuracy issues that were  
2 noticed -- that were noted in your technical  
3 memos, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: This is complicated by the  
6 need to resolve, with defensible evidence,  
7 conclusions that you draw from those  
8 inconsistencies, especially for the administrative  
9 record noncitizens.

10 BY MS. GOLDSTEIN:

11 Q So the Census Bureau has not yet  
12 completed its analysis that would support or not  
13 support Secretary Ross's conclusion in that  
14 sentence; is that fair to say?

15 A Yes.

16 MS. GOLDSTEIN: Let's take a short break  
17 and see where we're at. Off the record.

18 VIDEOGRAPHER: Going off the record. The  
19 time on the video is 5:59 p.m.

20 (Off the record.)

21 VIDEOGRAPHER: This begins Media Unit  
22 Number 7. The time on the video is 6:09 p.m. We

1 are on the record.

2 BY MS. GOLDSTEIN:

3 Q Dr. Abowd, I think I have just one more  
4 question.

5 If you will turn to the last page of the  
6 exhibit in front of you Bates marked 1320.

7 A Okay.

8 Q In light of the Census Bureau's analysis  
9 of Alternative C versus Alternative D, do you  
10 agree that reinstatement of a citizenship  
11 question on the 2020 decennial census is necessary  
12 to provide complete and accurate data in response  
13 to the DOJ request?

14 A No.

15 Q And that is the position of the  
16 Census Bureau, correct?

17 A Yes.

18 MS. GOLDSTEIN:

19 Q Thank you, Dr. Abowd.

20 I just want the record to reflect and  
21 that plaintiffs -- and I speak to all plaintiffs  
22 with respect to this -- are leaving the record

401;  
403

ACKNOWLEDGEMENT OF DEPONENT

I, DR. JOHN ABOWD, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

\_\_\_\_\_  
Date

\_\_\_\_\_  
DR. JOHN ABOWD

Stephen Ehrlich, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.  
United States Department of Commerce, et al.

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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et  
al., v. United States Department of Commerce, et  
al.,

Witness Name: DR. JOHN ABOWD

Deposition Date: Wednesday, August 29, 2018

Page No.	Line No.	Change/Reason for Change
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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x  
STATE OF NEW YORK, et al., :  
Plaintiffs, :  
vs. : Civil Action No.  
UNITED STATES DEPARTMENT OF : 1:18-cv-2921-JMF  
COMMERCE, et al., :  
Defendants. : Volume II

- - - - - x  
CONTINUED VIDEOTAPED 30(b)(6) DEPOSITION OF:  
UNITED STATES CENSUS BUREAU GIVEN BY JOHN M. ABOWD  
DATE: Friday, October 5, 2018  
TIME: 9:05 a.m.  
LOCATION: Arnold & Porter Kaye Scholer  
601 Massachusetts Avenue, N.W.  
Washington, D.C.  
REPORTED BY: Denise M. Brunet, RPR  
Reporter/Notary  
Veritext Legal Solutions  
1250 Eye Street, N.W., Suite 350  
Washington, D.C. 20005



A P P E A R A N C E S

On behalf of the New York Immigration Coalition:

DALE HO, ESQUIRE

American Civil Liberties Union

Foundation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SARAH BRANNON, ESQUIRE

American Civil Liberties Union

Foundation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the New York Immigration Coalition  
4 (continued):

5 JOHN A. FREEDMAN, ESQUIRE

6 DAVID GERSCH, ESQUIRE

7 Arnold & Porter Kaye Scholer, LLP

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12  
13 On behalf of the State of New York:

14 DANIELLE FIDLER, ESQUIRE

15 Assistant Attorney General

16 Environmental Protection Bureau

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21  
22 (Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the Kravitz Plaintiffs:

4 KARUN TILAK, ESQUIRE

5 Covington & Burling

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED]

10  
11 On behalf of the Lupe Plaintiffs:

12 NIYATI SHAH, ESQUIRE

13 ERI ANDRIOLA, ESQUIRE

14 Asian Americans Advancing Justice

15 [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20  
21  
22 (Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the City of San Jose & Black Alliance  
4 for Just Immigration:

5 DORIAN L. SPENCE, ESQUIRE

6 Lawyers Committee for Civil Rights

7 Under Law

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13  
14 On behalf of the State of California:

15 ANNA FERRARI, ESQUIRE

16 Department of Justice

17 Office of the Attorney General

18 Government Law Section

19 455 Golden Gate Avenue, Suite 11000

20 San Francisco, California 94102

21 (415) 510-3779

22 (Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the State of California (continued):

4 R. MATTHEW WISE, ESQUIRE

5 (via telephone)

6 Department of Justice

7 Office of the Attorney General

8 1300 I Street

9 P.O. Box 944255

10 Sacramento, California 94244

11 (916) 210-6053

12 matthew.wise@doj.ca.gov

13  
14 On behalf of Los Angeles Unified School District:

15 KEITH YEOMANS, ESQUIRE

16 (via telephone)

17 Dannis Woliver Kelley

18 115 Pine Avenue, Suite 500

19 Long Beach, California 90802

20 (562) 366-8500

21 keyomans@dwk.com

22 (Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the County of Los Angeles:

4 DAVID I. HOLTZMAN, ESQUIRE

5 (via telephone)

6 Holland & Knight

7 50 California Street

8 Suite 2800

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10 (415) 743-6909

11 david.holtzman@hklaw.com

12  
13 On behalf of Defendants:

14 STEPHEN EHRLICH, ESQUIRE

15 U.S. Department Of Justice

16 Civil Division

17 20 Massachusetts Avenue, Northwest

18 Washington, D.C. 20530

19 (202) 305-9802

20 stephen.ehrlich@usdoj.gov

21  
22 (Appearances continued on the next page.)

1 APPEARANCES (continued) :

2

3 On behalf of Defendants (continued) :

4 MILES RYAN, ESQUIRE

5 Office of the Chief Counsel for

6 Economic Affairs

7 Office of the General Counsel

8 U.S. Department of Commerce

9 U.S. Census Bureau

10 4600 Silver Hill Road

11 Suitland, Maryland 20746

12 (301) 763-9844

13 miles.f.ryan.iii@census.gov

14

15 ALSO PRESENT: Nhat Pham, Videographer

16

17

18

19

20

21

22

## C O N T E N T S

EXAMINATION BY: PAGE:

Mr. Ho 349

Ms. Fidler 436

ABOWD DEPOSITION EXHIBITS: PAGE:

24 - Bates COM\_DIS00009833 - 9909 349

25 - Bates COM\_DIS0012757 - 762 349

26 - DSSD 2010 Census Coverage Measurement  
Memorandum Series #2010-G-01 399

27 - Proposed Content Test on Citizenship  
Question 425

28 - Bates COM\_DIS00010669 - 684 436

29 - Bates COM\_DIS0013025 - 55 436

(\*Exhibits attached to the transcript.)



1 P R O C E E D I N G S

2 (Abowd Deposition Exhibit Numbers 24 and  
3 25 were marked for identification.)

4 THE VIDEOGRAPHER: We're now on the  
5 record at 9:05 on October 5th, 2018. This is the  
6 continuation of the 30(b)(6) deposition of the  
7 Census Bureau, given by John Abowd, taken in the  
8 matter of the New York Immigration Coalition, et  
9 al., v. United States Department of Commerce, et  
10 al.

11 Our court reporter is Denise Brunet,  
12 camera operator is Nhat Pham, both on behalf of  
13 Veritext.

14 Attorneys present and attending remotely  
15 will be noted on the stenographic record. Will  
16 the court reporter please swear in the witness.  
17 WHEREUPON,

18 JOHN M. ABOWD,  
19 called as a witness, and having been sworn by the  
20 notary public, was examined and testified as  
21 follows:

22 EXAMINATION BY COUNSEL FOR

1 no unless I'm unclear or if I've misstated  
2 something or if my question necessarily calls for  
3 a longer answer. Would that be okay?

4 A Yes, sir.

5 Q Okay. Picking up from last time, I've  
6 given you an exhibit that's been marked as  
7 Exhibit 24. Do you see that?

8 A Yes, sir.

9 Q Now, this is a white paper titled,  
10 Understanding the quality of alternative  
11 citizenship data sources for the 2020 census,  
12 dated August 6th, 2018, the first page of which  
13 has the Bates number COM\_DIS09833. Is that  
14 correct?

15 A Yes, sir.

16 Q Now, this document was created by the  
17 Census Bureau in the ordinary course of its  
18 business and not for litigation purposes, correct?

19 A That is correct.

20 Q I'm going to refer to this as the white  
21 paper. Okay?

22 A That's fine.

1 Q Now, the analysis in this white paper was  
2 begun in response to the Department of Justice's  
3 request for citizen voting age population data at  
4 the census block level, correct?

5 A Yes.

6 Q Now, the analysis in this paper attempts,  
7 among other things, to assess the quality of  
8 citizenship data available to the Census Bureau  
9 from different sources, like surveys and  
10 administrative records, correct?

11 A Yes.

12 Q The analysis in this paper also  
13 represents, among other things, the Census  
14 Bureau's efforts to assess the effect that the  
15 inclusion of a citizenship question would have on  
16 self-response rates the 2020 census; is that  
17 correct?

18 A May I make one clarification?

19 Q Sure.

20 A A white paper is produced as a research  
21 product by the authors and does not necessarily  
22 represent the views of the Census Bureau, but I do

1 today.

2 Q And the paper includes an assessment of  
3 the possible effect of the inclusion of the  
4 citizenship question on self-response rates to the  
5 2020 census, correct?

6 A Yes.

7 Q Now, the bureau is in the process of  
8 getting this white paper peer reviewed; is that  
9 right?

10 A Externally peer reviewed.

11 Q Why?

12 A We consider it a valuable scientific  
13 contribution made by the authors in the course of  
14 their work. The authors are in research positions  
15 at the Census Bureau, and so part of their job  
16 requirement is to have their technical work  
17 externally peer reviewed and appear in the  
18 scientific journals.

19 Q Is this the most recent version of the  
20 paper currently available?

21 A Yes, sir.

22 Q The authors of the white paper, they are

1 the members of the SWOT team that you assembled at  
2 the direction of Acting Census Bureau Director Ron  
3 Jarmin to respond to the DOJ request, correct?

4 A A subset, yes.

5 Q Is there anyone better at the Census  
6 Bureau for conducting the analysis that --  
7 contained in the white paper other than the  
8 authors of the white paper?

9 A I honestly don't know.

10 Q You wouldn't have chosen people who  
11 weren't the best people for this job, would you,  
12 Dr. Abowd?

13 A I attempted to choose the best people  
14 known to me for this job, yes.

15 Q Do you think you succeeded in choosing  
16 the best people known to you for conducting this  
17 analysis?

18 A Yes, sir.

19 Q To your right, there's a document that  
20 was marked as Exhibit 7 early -- during the first  
21 part of your deposition. This is a memo under  
22 your name dated January 19th, 2018. Do you see

1 that?

2 A Yes, sir.

3 Q Now, this memo of yours, Exhibit 7,  
4 relies on a preliminary version of the analysis  
5 that's contained in the white paper; is that  
6 right?

7 A Yes.

8 Q Is it fair to say that the white paper  
9 that's Exhibit 24 represents an extended and more  
10 up-to-date version of the analysis that you relied  
11 on in preparing your memo, Exhibit 7?

12 A Yes.

13 Q Now, in the -- we don't have to talk  
14 about your memo anymore. Just back to the white  
15 paper. In the Census Bureau's view, the various  
16 analyses contained in the white paper, Exhibit 24,  
17 were methodologically appropriate for the  
18 questions that the white paper attempted to  
19 answer, correct?

20 A Yes.

21 Q Now, does this white paper represent the  
22 Census Bureau's best possible analysis based on

1 existing data regarding the impact of the  
2 citizenship question on self-response rates to the  
3 2020 census?

4 A I would say it represents the primary  
5 research effort, but not all of the research  
6 effort.

7 Q And when you say it represents the  
8 primary research effort, would you say that it  
9 represents the best analysis that the Census  
10 Bureau has of the possible effect of adding the  
11 citizenship question on self-response rates for  
12 the 2020 census?

13 A I think it provides the inputs for doing  
14 the best analysis that we can of the consequences  
15 of the question on the 2020 census.

16 Q Is there any better analysis that the  
17 Census Bureau has of the effect of adding the  
18 citizenship question on self-response rates to the  
19 2020 census that's not contained in the white  
20 paper?

21 A There's one additional analysis in my  
22 expert report that's already been disclosed that

1 is not in the white paper.

2 Q Okay. Which analysis is that  
3 specifically?

4 A The one of the short-form test that  
5 followed the 1990 census.

6 Q Does the white paper represent the Census  
7 Bureau's best possible analysis of existing data  
8 regarding the quality of citizenship data that's  
9 available from different sources, such as surveys  
10 and administrative records?

11 A Yes.

12 Q Does the Census Bureau agree with the  
13 conclusions expressed in the white paper?

14 A I'll deal with that on a specific  
15 conclusion-by-conclusion basis.

16 Q As a general matter, are there  
17 conclusions in the white paper -- I'm sorry.

18 Are there conclusions in the white paper  
19 that the Census Bureau disagrees with?

20 A There are no conclusions in the white  
21 paper that the Census Bureau disagrees with.  
22 There are some of the author's interpretations



1 that I might not agree with.

2 Q Let's turn to page 2 of the white paper,  
3 Bates COM\_DIS09834. The last sentence of the  
4 abstract reads, "The evidence in this paper also  
5 suggests that adding a citizenship question to the  
6 2020 census would lead to lower self-response  
7 rates in households potentially containing  
8 non-citizens, resulting in higher field work costs  
9 and a lower quality population count."

10 Did I read that accurately?

11 A Yes, you did.

12 Q Does the Census Bureau agree that the  
13 balance of evidence available suggests that adding  
14 a citizenship question to the 2020 census would  
15 lead to lower self-response rates in households  
16 potentially containing non-citizens?

17 A Yes.

18 Q Does the Census Bureau agree that the  
19 balance of evidence available suggests that adding  
20 a citizenship question to the 2020 census would  
21 lead to a lower quality population count?

22 A I have to define lower quality population

1 count to answer that question. May I?

2 Q Yes, please.

3 A So the usual accuracy measures are two:

4 Net undercount and then its components, gross

5 omissions and erroneous enumerations and

6 whole-person census imputations. We have no

7 evidence that it would affect the quality as

8 regards net undercount. We have evidence that it

9 would affect the count -- the quality as regards

10 components of the errors in the enumeration.

11 Q We'll get back to that. Thank you for  
12 that clarification.

13 Could you turn to page 8 in the white  
14 paper, Bates number COM\_DIS09840? And I want to  
15 look at figure 1, panel A. This graph shows item  
16 non-response, which is the failure to answer  
17 certain questions, on the American Community  
18 Survey, or ACS, in the year 2016, broken down by  
19 various racial and ethnic subgroups; is that  
20 correct?

21 A Racial, ethnic and demographic subgroups,  
22 yes.

1 Q And the data here does not distinguish  
2 between citizens and non-citizens, correct? I'm  
3 referring to panel A only.

4 A Oh. That's correct.

5 Q So in panel A, when we look at data for a  
6 group like Hispanics on this chart, we're talking  
7 about a group that includes both Hispanic citizens  
8 and Hispanic non-citizens, correct?

9 A Correct.

10 Q Is it fair to say that on the ACS in 2016  
11 the item non-response rate for Hispanics on the  
12 citizenship question was more than twice as high  
13 as it was for non-Hispanic whites?

14 A Yes.

15 Q And let's look at figure 1, panel B on  
16 the same page. Now, this graph shows item  
17 non-response rates on the ACS in 2016 for  
18 respondents who were identified in the NUMIDENT  
19 data as non-citizens broken down by racial, ethnic  
20 and demographic subgroups, correct?

21 A Correct.

22 Q And is it fair to say that on the 2016

1 ACS, the item non-response rate for Hispanic  
2 non-citizens on the citizenship question was more  
3 than twice as high as it was for non-Hispanic  
4 white non-citizens?

5 A Yes.

6 Q Let's look at page 11, Bates number  
7 COM\_DIS9843, table 1. This table lists the  
8 breakoff rates for various questions on the ACS  
9 broken down by race and ethnicity, correct?

10 A Correct.

11 Q And the breakoff rate is the rate at  
12 which, when people are responding to the ACS  
13 questionnaire online, that they stop answering the  
14 survey upon encountering a screen with a  
15 particular question, correct?

16 A Correct.

17 Q If we look at the breakoff rates to the  
18 citizenship question and compare Hispanics to  
19 non-Hispanic whites, the breakoff rate on the 2016  
20 ACS for Hispanics on the citizenship question is  
21 more than ten times what it is for non-Hispanic  
22 whites, correct?

1 A Yes.

2 Q Can we look back at page 10, Bates number  
3 COM\_DIS9842? In the last paragraph, about a  
4 little more than halfway down, the third to last  
5 sentence starts with "Citizenship-related  
6 questions." It reads, "Citizenship-related  
7 questions have the most heterogenous rates across  
8 race/ethnicity groups; the ratio of breakoff rates  
9 for Hispanics versus non-Hispanic whites is much  
10 higher for year of entry and citizenship than any  
11 of the other question screens in the ACS, except  
12 for English proficiency, included in table 1 for  
13 reference purposes."

14 Now, in the view of the Census Bureau,  
15 what is the significance of the observation that  
16 breakoff rates for Hispanics versus non-Hispanic  
17 whites are much higher for year of entry and  
18 citizenship than any other question screen on the  
19 ACS, except for English proficiency?

20 A That the question is sensitive to that  
21 subpopulation.

22 Q When you say the question is sensitive to

1 that subpopulation, you mean it is -- the  
2 citizenship question is sensitive for Hispanics  
3 relative to non-Hispanic whites?

4 A Yes.

5 Q I want to ask you about what's been  
6 premarked as Exhibit 25, just to your right. It's  
7 a chart, the footer of which reads, 2017 breakoff  
8 rates by race group augmented 20180915.pdf, and  
9 the first page is Bates number 126757. Do I have  
10 that right?

11 A Mine says 20180917.pdf.

12 Q Sorry.

13 A Okay.

14 Q Other than that?

15 A Yes.

16 Q Okay. Now, let's look at the citizenship  
17 question breakoff rate on the 2017 ACS for  
18 non-Hispanic whites. That rate is .03489 percent,  
19 correct?

20 A Correct.

21 Q And the citizenship question breakoff  
22 rate on the 2017 ACS for Hispanics is

1 .4343 percent, correct?

2 A Yes.

3 Q So on the 2017 ACS, is it correct to say  
4 that the citizenship question breakoff rate for  
5 Hispanics is more than 12 times what it is for  
6 non-Hispanic whites?

7 A I didn't calculate the ratio myself, but  
8 that looks about right.

9 Q Okay. And if you look back to the 2016  
10 ACS breakoff rates on page 11 of the white paper  
11 and compare them to the 2017 breakoff rates, is it  
12 correct that the citizenship question breakoff  
13 rate for non-Hispanic whites stayed about the same  
14 in 2016 and 2017?

15 A Yes.

16 Q And is it correct that the citizenship  
17 question breakoff rate for Hispanics increased  
18 between 2016 and 2017?

19 A The point estimate increased. I didn't  
20 calculate a margin of error of the difference.

21 Q Okay. Now, is it correct to say, given  
22 the analysis of item non-response rates and

1 breakoff rates that we've talked about, that the  
2 Census Bureau believes that it is more likely than  
3 not that Hispanics will respond to the citizenship  
4 question on the 2020 census at a lower rate than  
5 non-Hispanic whites?

6 A Yes.

7 Q Is it also correct to say that the Census  
8 Bureau believes, based on the item non-response  
9 and breakoff rate analyses that we've discussed,  
10 that it is more likely than not that there will be  
11 a greater decline in unit self-response rates to  
12 the 2020 census due to the citizenship question  
13 among Hispanics than there will be among  
14 non-Hispanic whites?

15 A I'm not prepared to draw that conclusion  
16 from the analysis that you just showed me. Do you  
17 have other analyses you want me to look at?

18 Q Well, let's stay here. Is it fair to say  
19 that none of the analyses of ACS data that the  
20 Census Bureau has conducted suggests that  
21 self-response rates to the 2020 census among  
22 Hispanics and non-Hispanic whites will decline at



1 the same rate as a result of the citizenship  
2 question?

3 THE WITNESS: Could you read the question  
4 back, please?

5 (The reporter read the record as  
6 requested.)

7 THE WITNESS: Yes.

8 BY MR. HO:

9 Q Is it fair to say that the Census Bureau  
10 believes that unit self-response rates to the 2020  
11 census will decline more among Hispanics than  
12 non-Hispanic whites as a result of the citizenship  
13 question?

14 A To the extent that Hispanic is correlated  
15 with households containing non-citizens or persons  
16 of unknown citizenship status, yes.

17 Q Let's go back to the white paper and  
18 let's look at page 9, Bates number COM\_DIS09841.  
19 And I'm looking at figure 2, panel A. This graph  
20 shows the difference in item non-response on  
21 various questions comparing the 2013 and 2016 ACS  
22 broken down by various racial, ethnic and

1 demographic subgroups, correct?

2 A Yes.

3 Q And according to the Census Bureau's  
4 analysis, for non-Hispanic whites, non-response to  
5 the citizenship on the ACS did not change between  
6 2013 and 2006 [sic], correct?

7 A Yes.

8 Q And according to the Census Bureau's  
9 analysis for Hispanics, non-response to the  
10 citizenship question on the ACS increased between  
11 2013 and 2016, correct?

12 A Yes.

13 Q And during this same period for  
14 Hispanics, non-response to the sex question on the  
15 ACS actually decreased between 2013 and '16,  
16 correct?

17 A Hispanics, right?

18 Q Yes.

19 A Yes.

20 Q Let's go to the next page, page 10, and  
21 I'm looking at figure 2, panel B. This is the  
22 same analysis comparing 2013 and 2016 item

1 non-response rates but among individuals  
2 identified as non-citizens in the NUMIDENT data,  
3 correct?

4 A Yes.

5 Q And according to the Census Bureau's  
6 analysis, for non-Hispanic white non-citizens,  
7 non-response to the citizenship question on the  
8 ACS increased by less than 0.5 percentage points  
9 between 2013 and '16, correct?

10 A Yes.

11 Q And during the same period, for Hispanic  
12 non-citizens, non-response to the citizenship  
13 question on the ACS increased by more than 1.5  
14 percentage points, correct?

15 A Yes.

16 Q So is it fair to say that among  
17 non-citizens, the non-response rate to the  
18 citizenship question on the ACS between 2013 and  
19 2016 increased for Hispanics at more than three  
20 times the rate that it did for non-Hispanic  
21 whites?

22 A Yes.

1 Q Is it fair to say that, based on the  
2 Census Bureau's analysis of item non-response  
3 rates and breakoff rates, that the Census Bureau  
4 believes that Hispanics are more sensitive to  
5 survey questions about citizenship than they were  
6 a few years ago?

7 A Yes.

8 Q Is it fair to say that based on its  
9 analysis of item non-response rates and breakoff  
10 rates, the Census Bureau believes that whites are  
11 not more sensitive to citizenship questions than  
12 they were a few years ago?

13 A Yes.

14 Q Is it fair to say that the Census Bureau  
15 believes that, among non-citizens in particular,  
16 the sensitivity of Hispanics to survey questions  
17 about citizenship has grown more than it has for  
18 non-Hispanic whites?

19 A Yes.

20 Q Now, you testified during one of your  
21 depositions that the Census Bureau's best estimate  
22 as to the differential effect of the citizenship

1 question on self-response rates for non-citizens  
2 is that the addition of the citizenship question  
3 will cause non-citizen self-response rates to  
4 decline by 5.8 percentage points relative to  
5 citizens, correct?

6 A Households containing a non-citizen or a  
7 person of unknown citizenship status relative to  
8 households containing all persons with known  
9 citizenship status -- known citizens. And then --  
10 yes.

11 Q Yes, that's correct?

12 A With my correction of your definitions,  
13 yes.

14 Q Okay. Now, given that opinion, if  
15 someone said to you that the Census Bureau could  
16 not articulate a rationale to support its belief  
17 that there would be a decline in the response rate  
18 as a result of adding the citizenship question to  
19 the 2020 census and that the Census Bureau simply  
20 made an assumption that the self-response rate  
21 would decline, would you agree with that person?

22 A No.

1 MR. EHRLICH: Objection. Form.

2 THE WITNESS: Sorry.

3 BY MR. HO:

4 Q Did you ever tell --

5 THE WITNESS: Did my answer of "no" get  
6 recorded?

7 THE REPORTER: Yes, it did.

8 THE WITNESS: Thank you.

9 MR. HO: Thank you.

10 BY MR. HO:

11 Q Did you ever tell Earl Comstock from the  
12 Department of Commerce or give him the impression  
13 that the Census Bureau could not articulate a  
14 rationale to support its belief that there would  
15 be a decline in the self-response rate to the 2020  
16 census as a result of the citizenship question?

17 A No.

18 Q Did you, in fact, ever explain to  
19 Mr. Comstock the basis for the Census Bureau's  
20 belief that the addition of the citizenship  
21 question would reduce self-response rates to the  
22 2020 census?

1           A       Yes.

2           Q       Now, the Census Bureau's estimate of a  
3       5.8 percentage point reduction of households  
4       containing a non-citizen or someone of unknown  
5       citizenship status relative to households  
6       containing all citizens, that's an upward revision  
7       of an earlier estimate of a 5.1 percentage point  
8       reduction, right, Dr. Abowd?

9           A       The two numbers aren't directly  
10      comparable because the reference populations  
11      aren't the same.   It is a bigger number, but it  
12      applies also to a larger reference population.

13          Q       Okay. And let me see if I understand  
14      this. The difference is -- the 5.1 percentage  
15      point differential was a comparison of households  
16      with a non-citizen as compared to all-citizen  
17      households; is that right?

18          A       Where both of those are administrative  
19      record definitions of citizen, that's correct.

20          Q       Okay. And the 5.8 percentage point  
21      number, that is a comparison of households where  
22      there is a non-citizen as identified by the

1 administrative records or a person with unknown  
2 citizenship status in the administrative records  
3 compared to households with all citizens as  
4 defined in the administrative records, correct?

5 A Not quite. Th all household population  
6 had to be both in administrative records and  
7 self-declared. And then the comparison group is  
8 every other household.

9 Q Got it. Okay. So let me try this again.  
10 The 5.8 percentage point number, that's a  
11 comparison of households where the response to the  
12 ACS and the administrative records indicate that  
13 every member of the household is a citizen and all  
14 other households, right, Dr. Abowd?

15 A Yes.

16 Q Okay. That analysis -- if we look at  
17 page 38 of the white paper, Bates number  
18 COM\_DIS09870, that analysis producing the 5.8  
19 percentage point differential that we've  
20 discussed, that is set forth on this table,  
21 correct?

22 A Which table are you asking me to



1 reference?

2 Q Table 8.

3 A And which number?

4 Q The 5.8 percentage point differential.

5 A No, you have the wrong table.

6 Q Okay. Could you show me --

7 A Although you have that right number.

8 Q Could you show me the right table?

9 A 9, second panel.

10 Q Got it. Okay. So this analysis, the 5.8  
11 percentage point -- that produces the 5.8  
12 percentage point differential, that's based on a  
13 comparison of 2016 ACS data to -- response rates,  
14 I'm sorry, to 2010 decennial response rates,  
15 correct?

16 A Yes.

17 Q Okay. So in the Census Bureau's  
18 estimation, it's more accurate -- if you're trying  
19 to assess the impact of the addition of the  
20 citizenship question on self-response rates, it's  
21 more reliable to use more recent ACS non-response  
22 data in calculating your estimate; is that

1 correct?

2 MR. EHRLICH: Objection. Form.

3 THE WITNESS: Generally, yes.

4 BY MR. HO:

5 Q Let's look at page 46 of the report,  
6 Bates number COM\_DIS9878, and I'm looking at the  
7 third full paragraph here.

8 A "As mentioned above"?

9 Q "As mentioned above." It reads, "As  
10 mentioned above, the estimated reduction in  
11 self-response due to the inclusion of a  
12 citizenship question is based on a comparison of a  
13 long 2010 ACS questionnaire to a short 2010 census  
14 questionnaire. The visibility of the citizenship  
15 question may be more prominent when added to a  
16 short questionnaire, resulting in a larger  
17 reduction in self-response than what we have  
18 estimated here."

19 Did I read that right?

20 A Yes, you did.

21 Q Would it be accurate to say that the  
22 Census Bureau believes that the effect of a

1 citizenship question in terms of reducing response  
2 rates among households that have a non-citizen or  
3 someone of undefined citizenship status,  
4 et cetera, as compared to all citizen households  
5 might be even larger than 5.8 percentage points  
6 because that estimate is based on ACS data, and  
7 here the citizenship question would have more  
8 prominence on the relatively shorter 2020 census  
9 questionnaire?

10 A If the question is does the Census Bureau  
11 agree with the question -- with the sentences in  
12 the paragraph that you read me, the answer is yes.

13 Q Okay. Let me try this again. Does the  
14 Census Bureau believe that 5.8 percentage  
15 points -- that that estimate is conservative? Let  
16 me stop there.

17 A Yes.

18 Q Okay. And one of the reasons why the  
19 Census Bureau believes that that estimate is  
20 conservative is that it's based on ACS  
21 non-response rates, whereas, here, if you add the  
22 citizenship question to the census questionnaire,

1 the citizenship question could have more  
2 prominence and a greater effect in terms of  
3 reducing self-response rates; is that right,  
4 Dr. Abowd?

5 A Yes.

6 Q Now -- okay. The Census Bureau's view,  
7 Dr. Abowd, which you articulated earlier, is that  
8 the Census Bureau is going to enumerate most of  
9 the people who failed to respond to the census  
10 questionnaire because of the citizenship question;  
11 is that right?

12 MR. EHRLICH: Objection. Form.

13 THE WITNESS: The vast majority, yes.

14 BY MR. HO:

15 Q Now, one of the ways that you have of  
16 enumerating people when their household does not  
17 self-respond to the census questionnaire is by  
18 sending census enumerators in person to that  
19 household, correct?

20 A That's correct.

21 Q And we would call that -- we could call  
22 that part of the non-response follow-up, or

1 A Not completely.

2 Q Is there an empirical basis for the  
3 Census Bureau's incomplete agreement with that  
4 sentence?

5 A The sentence represents a summary of  
6 qualitative evidence with which the Census Bureau  
7 agrees that hard-to-count subpopulations are less  
8 cooperative in NRFU and, to that extent, the  
9 Census Bureau agrees with that sentence.

10 Q Okay. And that sentence was written by  
11 the authors of this white paper whom you selected  
12 as the best people at the Census Bureau to conduct  
13 the analysis reflected in the white paper,  
14 correct, Dr. Abowd?

15 A Yes.

16 Q Let's turn forward two pages to page 43,  
17 Bates number COM\_DIS09875. And let's look at  
18 footnote 60, which reads, "These enumeration  
19 errors may not be avoidable simply by spending  
20 more money on field work. Once a household  
21 decides not to cooperate, it may not be possible  
22 to obtain an accurate enumeration no matter how

1 many times an enumerator knocks on their door."

2 In this footnote, the term "these  
3 enumeration errors" refers to enumeration errors  
4 that arise as a result of increased non-response  
5 to the census questionnaire due to the addition of  
6 a citizenship question, correct?

7 A Yes.

8 Q And the view of the Census Bureau is that  
9 enumeration errors arising from the decline in  
10 self-response caused by the citizenship question  
11 may not be avoidable simply by spending more money  
12 on field work, correct?

13 A Yes.

14 Q And it is the view of the Census Bureau  
15 that once a household decides not to cooperate  
16 with the census because of the citizenship  
17 question, it may not be possible to obtain an  
18 accurate enumeration of that household no matter  
19 how many times an enumerator knocks on their door,  
20 correct?

21 A Accurate in this sentence means erroneous  
22 enumerations and whole-person census imputations.

1 It does not mean net undercount.

2 THE REPORTER: Could you please repeat  
3 your answer.

4 THE WITNESS: Accurate enumeration in  
5 this sentence means enumeration errors and  
6 whole-person census imputations. It does not mean  
7 net undercount.

8 BY MR. HO:

9 Q Now, if you send an in-person enumerator  
10 to a household that doesn't self-respond and that  
11 doesn't result in a response, one way that you  
12 could -- another way you could have of enumerating  
13 that household is through a proxy response, which  
14 means trying to obtain a response from someone who  
15 is not a member of that household about that  
16 household, correct?

17 A Yes.

18 Q And the Census Bureau agrees that proxy  
19 enumeration generally results in lower quality  
20 enumeration data than self-responses, correct?

21 A Yes.

22 Q And the Census Bureau agrees that a proxy

1 response is more likely to result in the omission  
2 of a household member than a self-response,  
3 correct?

4 A I haven't looked at the table recently,  
5 but I believe that's correct, yes.

6 Q Let's go to the white paper again. And I  
7 want to look at page 12, Bates number  
8 COM\_DIS09844, figure 3.

9 A Figure 3, did you say?

10 Q I believe so. On page 12?

11 A Okay. I thought I heard 4.

12 Q Okay. Figure 3 depicts unit non-response  
13 to the ACS from 2010 through 2016 comparing census  
14 tracts with the lowest decile of housing units  
15 containing a non-citizen to the census tracts in  
16 the highest decile of housing units containing a  
17 non-citizen, correct?

18 A Correct.

19 Q And for each year of ACS depicted here,  
20 census tracts in the highest decile of housing  
21 units containing a non-citizen have a lower  
22 response rate to the ACS than do census tracts in



1 the lowest decile of housing units with a  
2 non-citizen, correct?

3 A Yes.

4 Q And for both groups, unit non-response to  
5 the ACS declined between 2010 and 2016, correct?

6 A No. It increased between 2010 and 2011  
7 and then declined from 2011 forward.

8 Q But if we just compare 2016 to 2010 --

9 A Yes.

10 Q -- the unit non-response rate for both  
11 groups in 2016 was lower than it was in 2010,  
12 correct?

13 A That's correct, yes.

14 Q Okay. And the decline amongst -- I'm  
15 sorry, let me start that again.

16 The decline in census tracts in the  
17 highest decile of housing units including a  
18 non-citizen -- the decline in unit self-response  
19 rates for that group was sharper than the decline  
20 in unit self-response rates by households in  
21 census tracts with the -- in the lowest decile of  
22 housing units with a non-citizen, correct?

1           A       I think the answer to your question is  
2       yes.   Does the record reflect colors?

3           Q       We'll put it in in color.   That's the  
4       orange line, right?

5           A       The orange line declines more sharply  
6       than the blue line.

7           Q       Now, last time in your deposition, we  
8       talked about a similar census tract stratification  
9       analysis for ACS NRFU efforts.   Does that ring a  
10      bell?

11          A       Yes.

12          Q       Okay.   And you remember that census  
13       tracts with higher percentages of households  
14       including a non-citizen had lower ACS NRFU success  
15       rates than census tracts with lower percentages of  
16       non-citizens?

17          A       So -- I think you're right, but I don't  
18       want to rely on my memory.   If you show me the  
19       exhibit, I will answer the question.   But I'm not  
20       sure --

21          Q       Okay.

22          A       -- that you and I are both referring to

1 the same exhibit.

2 Q Okay. Well, given what we've talked  
3 about, that unit non-response is lower in census  
4 tracts that have higher percentages of  
5 non-citizens and that ACS NRFU is less successful  
6 in census tracts that have higher percentages of  
7 households including a non-citizen, does the  
8 Census Bureau expect that people who live in  
9 census tracts with higher percentages of  
10 households with a non-citizen would also be less  
11 likely to provide proxy responses to the census  
12 than people who live in other areas?

13 A Accepting your premise about my testimony  
14 from before, the Census Bureau believes that that  
15 is likely, yes.

16 Q Let's look at page 43 of the white paper,  
17 Bates number COM\_DIS09875. Let's look at the last  
18 full paragraph on this page. About halfway down,  
19 the second to last sentence starts -- it's about  
20 halfway down in that paragraph. The second to  
21 last sentence starts with, "As shown above."

22 A Yes.

1 Q "As shown above, reference persons are  
2 much less likely to answer the citizenship  
3 question for non-relatives in the household than  
4 for themselves, so may be even less likely to  
5 answer it for neighbors."

6 Does the Census Bureau agree with the  
7 statement that people are less likely to answer  
8 the citizenship question for their neighbors than  
9 for themselves?

10 A Yes.

11 Q Now, another way that you can enumerate  
12 people when they don't self-respond to the census  
13 is to try to enumerate them using administrative  
14 records like tax returns; is that right?

15 A All the way up to "like tax returns,"  
16 yes.

17 Q Okay. Forget the tax returns. One way  
18 that -- if you don't get a self-respond to the  
19 census questionnaire, one way that you might try  
20 to enumerate that household is with administrative  
21 records, correct?

22 A Yes.

1 primarily why the Census Bureau would be unable to  
2 link an ACS respondent to an administrative record  
3 indicating citizenship status: One, because the  
4 personally identifiable information on the survey  
5 response might not be high quality enough to link  
6 that person to administrative records; and, two,  
7 because the survey respondent is not in the  
8 administrative records at all; is that correct?

9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: Yes.

11 BY MR. HO:

12 Q And if we look back at the graph,  
13 figure 4, among 2016 ACS respondents, Hispanics  
14 could not be linked to an administrative record at  
15 a higher rate than non-Hispanic whites, correct?

16 A Correct.

17 Q Now, based on this data, would you agree  
18 that the available evidence indicates that the  
19 Census Bureau, generally speaking, cannot link  
20 Hispanic survey respondents to administrative  
21 records at as high a rate as it can for  
22 non-Hispanic whites?

1           A       Yes.

2           Q       The administrative records referenced  
3       here are the SSA and tax records, correct?

4           A       The individual tax identification number  
5       records.

6           Q       You corrected me earlier when we talked  
7       about enumeration via administrative records.  
8       Could you just clarify what administrative records  
9       the Census Bureau relies on when it tries to  
10      enumerate people using administrative records?

11          A       There's two parts to the process for  
12      using administrative records for enumeration. One  
13      part is performing the record linkage to identify  
14      all of the administrative records that might apply  
15      to a particular household. And the other part is  
16      constructing a candidate administrative record  
17      enumeration to be used during the NRFU process if  
18      the first NRFU follow-up visit doesn't produce a  
19      successful interview.

20                 In the former part of the process,  
21      there's extensive use of tax records. In the  
22      latter part of the process, by agreement with the

1 IRS, none of the tax data survive to the record  
2 that will be used for a candidate enumeration.  
3 That was the distinction I was trying to...

4 Q Would you agree that undocumented  
5 individuals are less likely to be found in the  
6 administrative records -- and when I say  
7 undocumented individuals, I mean undocumented  
8 immigrants -- are less likely to be found in the  
9 administrative records that the Census Bureau uses  
10 to enumerate people than persons who have legal  
11 status in this country?

12 A Yes.

13 Q And would you agree that the Census  
14 Bureau would have a more difficult time  
15 enumerating undocumented immigrants through the  
16 use of administrative records than it will for  
17 persons with legal status?

18 MR. EHRLICH: Objection. Form.

19 THE WITNESS: Yes.

20 BY MR. HO:

21 Q Overall, would you agree that the Census  
22 Bureau does not expect enumeration by

1 administrative records to be as successful for  
2 non-citizens as it is for citizens?

3 MR. EHRLICH: Objection. Form.

4 THE WITNESS: Yes.

5 BY MR. HO:

6 Q Let's go to page 5 of the white paper,  
7 Bates number COM\_DIS09837. And I'm looking at the  
8 last paragraph on the page that starts with,  
9 "Camarota."

10 "Camarota and Capizzano, 2004, conducted  
11 focus groups with over 50 field representatives  
12 (FRs) for the 2000 supplemental survey, a pilot  
13 for the ACS. FRs reported that foreign-born  
14 respondents living in the country illegally or  
15 from countries where there is distrust in  
16 government were less likely to cooperate. Some  
17 foreign-born respondents failed to list all  
18 household members. FRs suspected that some  
19 foreign-born respondents misreported citizenship  
20 status, and they" -- continuing to the next  
21 page -- "believed this was due to recall bias, a  
22 fear of the implications of certain responses or a



1 households to include a response for every member  
2 of their household, such as children, correct?

3 MR. EHRLICH: Objection. Form.

4 THE WITNESS: Are you referring to a  
5 specific study that you want me to comment on?

6 BY MR. HO:

7 Q I'm not. I'm just -- my understanding  
8 is -- and I just want you to correct me if my  
9 understanding is mistaken -- that the Census  
10 Bureau has looked at the historical undercount of  
11 Hispanics in previous censuses. That's correct,  
12 right?

13 A Yes.

14 Q Okay. And one of the reasons that the  
15 Census Bureau has attributed the undercount of  
16 Hispanics to in previous censuses has been the  
17 failure of Hispanic households to provide a  
18 response for every member of their household,  
19 correct?

20 A Yes.

21 Q Okay. Now, the Census Bureau agrees that  
22 if the citizenship question is included in the

1 census, that would likely cause some households,  
2 such as those including a non-citizen or those  
3 including an undocumented immigrant, to fail to  
4 provide a response for every member of the  
5 household when they respond to the census,  
6 correct?

7 THE WITNESS: Could you read the question  
8 back?

9 (The reporter read the record as  
10 requested.)

11 THE WITNESS: The Census Bureau believes  
12 that the households in your question might be  
13 unlikely to provide a full enumeration whether or  
14 not there's a citizenship question on the census  
15 and does not have evidence of an incremental  
16 effect from the citizenship question.

17 BY MR. HO:

18 Q Well, does the Census Bureau believe that  
19 the citizenship question could have an incremental  
20 effect in certain households failing to enumerate  
21 every member of their household when they respond  
22 to the census?

1           A       I think I just answered that question.

2           Q       Is the evidence that we've seen and  
3       discussed about item non-response, unit  
4       non-response, breakoff rates with a citizenship  
5       question, is that evidence consistent with the  
6       notion that adding a citizenship question to the  
7       census would cause an incremental increase in the  
8       number of households that respond to the census  
9       but don't provide a response for every member of  
10      their household?

11          A       Yes.

12          Q       Now, NRFU efforts are only initiated if a  
13      household fails to provide a response for that  
14      household altogether, correct?

15          A       With a few minor exceptions outlined in  
16      my expert report, correct.

17          Q       So if a household responds to the census,  
18      but omits some of the members of that household,  
19      the Census Bureau doesn't send in-person  
20      enumerators to that person's door because you'd  
21      have no way of knowing if they omitted some  
22      members of their household, correct?

1           A       If the household's response passes the  
2       sufficiency condition for being considered an  
3       essentially complete response, then, yes.

4           Q       What's a sufficiency condition for being  
5       considered a complete response?

6           A       It's a set of conditions that are checked  
7       before the NRFU workload is generated to see  
8       whether the response that came in from the  
9       household is complete enough to essentially fill  
10      in the rest with imputations or not. It varies by  
11      type of enumeration area, but -- and the actual  
12      conditions haven't been set for 2020 yet.

13                   It is my way of saying there are some  
14      cases that go to NRFU where there was an  
15      incomplete response. And I don't have  
16      quantitative evidence on how many of those there  
17      are, but, generally, you're right. Generally, if  
18      you submit a self-response, it doesn't go to NRFU.

19           Q       Generally speaking, if you answer the  
20      questions on the census questionnaire, the 10  
21      questions, or 11, but you don't list every member  
22      of the household, the Census Bureau is not going

1 to send an in-person enumerator to your door,  
2 correct?

3 A Correct.

4 Q Okay. And if you fill out the census  
5 response, answer the 10 or 11 questions, but don't  
6 list every member of your household, the Census  
7 Bureau is not going to try to get a proxy response  
8 for your household, right?

9 A Correct.

10 Q And if you answer the census  
11 questionnaire, but you don't list every member of  
12 your household, the Census Bureau is not going to  
13 start imputing -- sorry -- the Census Bureau is  
14 not going to start using administrative records to  
15 enumerate additional members of your household,  
16 correct?

17 A That actually hasn't been determined, but  
18 it's probably correct.

19 Q Okay. And if you answer the census  
20 questionnaire, but you don't list every member of  
21 your household, the Census Bureau isn't going to  
22 start imputing additional members of your

1 household, correct?

2 A Correct.

3 Q I want to show a document that's been  
4 marked as Exhibit 26.

5 (Abowd Deposition Exhibit Number 26 was  
6 marked for identification.)

7 BY MR. HO:

8 Q This is an official memo published by the  
9 Census Bureau, correct?

10 A It's part of the public memorandum series  
11 following the 2010 census that documents the  
12 coverage measurement studies, yes.

13 Q And this memo, Exhibit 26, it was  
14 produced by the Census Bureau in the ordinary  
15 course of its business, not for the purposes of  
16 litigation, correct?

17 A Correct.

18 Q Okay. And the subject line of this  
19 Census Bureau memo is, "2010 census coverage  
20 measurement estimation report, summary of  
21 estimates of coverage for persons in the United  
22 States," correct?

1 A Correct.

2 Q The lead author or the person that's  
3 prepared by is Thomas Mule, correct?

4 A Mule.

5 Q Mule. Thank you. He is in the decennial  
6 statistical studies division where he's an  
7 economist in the Census Bureau, correct?

8 A He's a mathematical statistician,  
9 otherwise correct.

10 Q Okay. And this memo is cited in the  
11 white paper, Exhibit 24, correct?

12 A Yes.

13 Q Okay. Now, it's fair to say that  
14 Exhibit 26, the Mule memo, that a purpose of it is  
15 to estimate how well the 2010 census covered the  
16 total population of the United States?

17 A Its purpose is to summarize a series of  
18 studies that had that goal, among others.

19 Q And the 2010 census, that included NRFU  
20 efforts for households that did not self-respond  
21 to the census questionnaire, correct?

22 A Yes.

1 Q The 2010 census NRFU efforts included  
2 sending in-person enumerators to households that  
3 didn't self-respond, correct?

4 A Correct.

5 Q And the 2010 census included the use of  
6 proxy enumeration for households that didn't  
7 self-respond, correct?

8 A Correct.

9 Q And the 2010 census also included efforts  
10 to enumerate using administrative records  
11 households that didn't self-respond, correct?

12 A I believe only on a experimental basis.

13 Q But it did include the use of enumeration  
14 via administrative records in the 2010 census,  
15 correct?

16 A I'm actually not sure that's correct. I  
17 believe it was only experimental.

18 Q The 2010 census NRFU efforts included  
19 whole-person imputation for households that did  
20 not self-respond, correct?

21 A Correct.

22 Q Let's turn to page 17 of the Mule memo,



1 table 9, titled, "Components of census coverage by  
2 race and Hispanic origin."

3 The far right column in this table is  
4 labeled, "Omissions," correct?

5 A Yes, although I prefer the term "gross  
6 omissions."

7 Q Okay.

8 A Some of the experts use one and some use  
9 the other. As long as we understand, whenever I  
10 say omissions, it's gross omissions.

11 Q Okay. Omissions in this column, or gross  
12 omissions as you would have it, refers to  
13 percentage of people whom the Census Bureau  
14 estimated were not counted in the 2010 census,  
15 correct?

16 A It refers to the difference between the  
17 dual-system estimator and the number of persons  
18 that the coverage evaluation survey determined the  
19 estimate were correct enumerations.

20 Q Well, one way of characterizing this is  
21 you have that dual estimator calculation of the  
22 total population and you also have the number of

1 people who the Census Bureau believes were  
2 correctly enumerated in the 2010 census through  
3 self-responses or in-person enumerators or proxy  
4 responses, et cetera, and omissions is the  
5 difference between the two, correct?

6 A No.

7 Q All right. Try to explain it to me  
8 again. I'm sorry.

9 A So net undercount is the difference  
10 between the dual-system estimator and the census  
11 count.

12 Q Yes.

13 A Okay? Gross omissions is the difference  
14 between the dual-system estimator and correct  
15 enumerations, which is not the same thing as the  
16 census count. Okay?

17 Q Okay.

18 A Is that what you think you said? Because  
19 that's not what I heard. I'm sorry. I'm not  
20 supposed to ask the questions. I'm sorry.

21 Q I'll ask the questions here. The Census  
22 Bureau estimates that it omitted 5.3 percent of

1 the population in the 2010 census, correct?

2 A Gross omissions, correct.

3 Q Okay. Now, the second to right-hand  
4 column is the percent undercount, which is a  
5 different number, right?

6 A Correct.

7 Q And if we look at percent undercount, the  
8 Census Bureau estimates that the 2010 census  
9 actually overcounted the total population of the  
10 United States by 0.01 percent, correct?

11 A That overcount is not statistically  
12 significant, but that's the correct point  
13 estimate.

14 Q Okay. Now, the omissions are not evenly  
15 distributed across racial and ethnic groups,  
16 correct?

17 A The gross omissions are not, correct.

18 Q And the undercount is not distributed  
19 evenly among racial and ethnic groups, correct?

20 A That's correct. And undercount here is  
21 net undercount.

22 Q So let's start with non-Hispanic whites.

1 The Census Bureau estimates that 3.8 percent of  
2 non-Hispanic whites were omitted in the 2010  
3 census, correct?

4 A You're using non-Hispanic white alone  
5 row, correct?

6 Q And the Census Bureau estimates that  
7 people who are non-Hispanic white alone were  
8 overcounted in the 2010 census by 0.83 percent,  
9 correct?

10 A Correct. And that one is statistically  
11 significant.

12 Q If we look at people who are identified  
13 as black in the census, the Census Bureau  
14 estimates that 9.3 percent of blacks were omitted  
15 in the 2010 census, correct?

16 A Correct.

17 Q And the Census Bureau estimates that  
18 blacks were undercounted in the 2010 census by  
19 2.06 percent, correct?

20 A Correct. And that one is also  
21 statistically significant.

22 Q Let's look at Hispanics. The Census

1 Bureau estimates that 7.7 percent of Hispanics  
2 were omitted in the 2010 census, correct?

3 A That's the last row, and correct.

4 Q And the Census Bureau estimates that  
5 Hispanics were undercounted in the 2010 census by  
6 1.54 percent, correct?

7 A Yes, and it's statistically significant.

8 Q So if we summarize the data that we just  
9 discussed, the racial or ethnic group with the  
10 highest percentage of omissions, blacks, also had  
11 the highest percentage undercount, correct? Just  
12 of the three groups that we discussed.

13 A Oh. Of the three groups we discussed,  
14 that is correct.

15 Q And Hispanics had a higher omission rate  
16 than people who are non-Hispanic white alone and  
17 also had a higher undercount rate as compared to  
18 people who were non-Hispanic white alone, correct?

19 A Correct.

20 Q Overall, there was no net undercount in  
21 2010, but there were undercounts of particular  
22 racial and ethnic subgroups, correct?

1           A       Those are called differential net  
2       undercounts, and that is correct.

3           Q       And while there was overall across the  
4       nation no net undercount, there were also in  
5       certain states and localities net undercounts,  
6       correct?

7           A       We did produce estimates that suggest  
8       that, yes.

9           Q       Okay. I want to go back to the white  
10       paper and I want to ask you questions about  
11       different alternatives for obtaining citizenship  
12       data described in the white paper. Do you  
13       remember alternative C, which is the exclusive  
14       reliance on administrative records, Dr. Abowd?

15          A       Yes.

16          Q       Now, one limitation of alternative C is  
17       that, if you use alternative C, you won't be able  
18       to match every person enumerated in the census to  
19       an administrative record containing citizenship  
20       data, correct?

21          A       Correct.

22          Q       So let's flip to page 49, figure 11,

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1 alternative C. This is Bates COM\_DIS09881. Now,  
2 there are two figures here that present two  
3 different scenarios for alternative C and how many  
4 people for whom the Census Bureau estimates you'd  
5 be able to obtain citizenship data using  
6 administrative records, correct?

7 A Correct.

8 Q Let's look at panel B, which is the  
9 revised assumptions for alternative C. Among the  
10 two scenarios, panel B, with the revised  
11 assumptions, is the worse scenario in terms of the  
12 accuracy of alternative C, correct?

13 A It is worse than panel A.

14 Q Okay. So let's use the worse scenario.  
15 Under the worse scenario, the revised assumptions,  
16 the Census Bureau expects that, under  
17 alternative C, you'd be able to link 289.6 million  
18 people, out of the 330 million people you expect  
19 to enumerate in the census, to administrative  
20 records, correct?

21 A Correct.

22 Q That's about 88 percent of the

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1 population. Sound right?

2 A I didn't do the calculation, but I'll  
3 accept that.

4 Q Thanks. And the Census Bureau expects  
5 under this scenario that, under alternative C, you  
6 would not be able to link about 40.4 million  
7 people to administrative records on citizenship,  
8 correct?

9 A Correct.

10 Q So under this scenario, if you use  
11 alternative C, the Census Bureau would have to  
12 model or impute the citizenship status of about  
13 12 percent of the population to produce the CVAP  
14 data that DOJ has requested, correct?

15 A Correct.

16 Q Now, let's talk about alternative D,  
17 which is to both include a citizenship question on  
18 the census and to rely on administrative records.  
19 Now, the Census Bureau did not recommend  
20 alternative D, correct?

21 A Correct.

22 Q And the Census Bureau still does not

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1 recommend alternative D, correct?

2 A Correct.

3 Q Let's look at page 51, figure 12,  
4 panel B, alternative D. Now, this has -- this  
5 figure has estimates for, if you use  
6 alternative D, how many people you would determine  
7 the citizenship status of using various methods,  
8 correct? At a high level, that's a correct  
9 description, right?

10 A Yes.

11 Q And this uses the same revised  
12 assumptions that we -- that were employed  
13 regarding alternative C that you and I discussed a  
14 moment ago in panel B of figure 11, correct?

15 A That's correct.

16 Q In addition to those revised assumptions,  
17 it also includes an assumption that, when you get  
18 proxy respondents for people who don't respond to  
19 the census, that, generally speaking, those proxy  
20 responses are going to report citizenship status,  
21 correct?

22 A I actually don't recall. Did you --

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1 Q Well, under -- it says --

2 A Oh, yeah, sorry.

3 Q -- here, panel B, alternative --

4 A Yes. Okay.

5 Q -- D.

6 A Yes, that's right. Thank you. Next  
7 time, I'll read the panel titles before I answer.

8 Q My fault. It's probably an unrealistic  
9 rosy assumption, Dr. Abowd, wouldn't you agree,  
10 that proxies in the 2020 census are, as a general  
11 matter, going to report the citizenship status of  
12 their neighbors or for whomever else they're  
13 giving a proxy response?

14 MR. EHRLICH: Objection. Form.

15 THE WITNESS: Yes, it's optimistic.

16 BY MR. HO:

17 Q Okay. So let's take this optimistic  
18 scenario for alternative D. On the right side of  
19 the chart, under alternative D, in this scenario,  
20 there are 20.9 million people for whom you  
21 estimate there will be no census response as to  
22 that person -- those people's citizenship status,

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1 correct?

2 A Correct.

3 Q And if we look at the far left side of  
4 the chart, under alternative D, this optimistic  
5 scenario, there are 260.9 million people who can  
6 be linked to an administrative record and whom you  
7 estimate their response to the citizenship  
8 question is going to be consistent with the  
9 administrative record on citizenship, correct?

10 A Yes.

11 Q And for both these groups that we just  
12 discussed, the 20.9 million people that don't give  
13 a census response as to citizenship, and the 260.9  
14 million people for whom the census response is the  
15 same as the administrative record, adding the  
16 citizenship question doesn't in any way improve  
17 our ability to get citizenship data about these  
18 two groups of people, correct?

19 A Yes.

20 Q So that's a total of 281.8 million  
21 people, out of the 330 million the Census Bureau  
22 expects to enumerate, for whom the addition of the

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1 citizenship question does not improve our ability  
2 to get citizenship data on, correct?

3 A Correct.

4 Q And that's about 85.4 percent of the  
5 population for whom the addition of the  
6 citizenship question makes no improvement in terms  
7 of the availability of citizenship data, correct?

8 A Again, I didn't calculate the proportion,  
9 but that sounds right, yes.

10 Q Okay. Now, the Census Bureau under  
11 alternative D expects that the effect on a  
12 reduction of self-response rates would be the same  
13 as under alternative B, which is just adding the  
14 citizenship question without using administrative  
15 records, correct?

16 A Correct.

17 Q And that means that the Census Bureau  
18 expects that, under alternative D, there are more  
19 people who would end up getting enumerated by  
20 proxy than if you used alternative C, which is  
21 administrative records only, no citizenship  
22 question, correct?

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1 A Correct.

2 Q And so that means that, under  
3 alternative D, as compared to alternative C, the  
4 Census Bureau believes that it's going to be able  
5 to link fewer people to administrative records  
6 because there will be more people enumerated by  
7 proxy and proxies generally have lower quality  
8 data than self-responses, correct?

9 A Yes.

10 Q Now, let's go back to this chart. In  
11 this scenario, there are 39.5 million people under  
12 alternative D who would provide a census response  
13 to citizenship, but who could not be linked to an  
14 administrative record, right?

15 A Yes.

16 Q And you also have a total of 4.9 million  
17 people who have no census response on citizenship  
18 and have no administrative record on citizenship,  
19 correct?

20 A Correct.

21 Q So that means, under the scenario in  
22 alternative B -- D, I'm sorry, if you add those

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1 two numbers together, it's a total of 44.4 million  
2 people who can't be linked to administrative  
3 records, correct?

4 A Correct.

5 Q So that means, if you'll accept my math,  
6 that under alternative D, about 13.5 percent of  
7 the population you won't be able to link to  
8 administrative records, right?

9 A Correct.

10 Q And that's more people that you would not  
11 be able to link to administrative records than if  
12 you used alternative C, just using the  
13 administrative records with no citizenship  
14 question, correct?

15 A Correct.

16 Q Back to the chart, if we look at the left  
17 branch of the chart, but the middle sub-branch,  
18 under alternative D in this optimistic scenario,  
19 you expect that there are about 8.7 million people  
20 for whom the survey response about citizenship and  
21 the administrative data on citizenship will not  
22 agree, correct?

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1 A Yes.

2 Q That means that currently under  
3 alternative D, under this scenario, the Census  
4 Bureau at present estimates that there are  
5 8.7 million people for whom it doesn't know how  
6 it's going to determine their citizenship status  
7 for purposes of assembling DOJ's CVAP data,  
8 correct?

9 A At the moment, that's correct.

10 Q Okay. That problem of not knowing how to  
11 assign citizenship status for millions of people,  
12 that problem does not exist under alternative C,  
13 correct?

14 A Correct.

15 Q Now, the traditional Census Bureau  
16 practice, in general, is that if you have a survey  
17 response that conflicts with an administrative  
18 record, you generally rely on the survey response,  
19 correct?

20 A Correct.

21 Q But here, you would agree that, under  
22 alternative D, if you use the survey response for

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1 these 8.7 million people for whom you estimate the  
2 survey response and the administrative record  
3 conflict, that that would be more inaccurate on  
4 average than just relying on the administrative  
5 record, correct?

6 A We have said there's a disagreement and  
7 that is probably an inaccuracy, correct.

8 Q Conversely, you would expect, under  
9 alternative D, when you have this conflict between  
10 the survey response and the administrative record  
11 for this 8.7 million people, if you were to rely  
12 by default on the administrative record rather  
13 than the survey response, then for that population  
14 of 8.7 million people, there was no reason to ask  
15 them the citizenship question, correct?

16 A Correct.

17 Q Let me ask about a different issue.  
18 Under alternative D, with some of the people for  
19 whom you lack citizenship data through  
20 administrative records, you at least now have a  
21 survey self-response about citizenship, right?

22 A Are you talking about the one that comes

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1 down to 39.5 million?

2 Q Yeah.

3 A Okay. Yes.

4 Q So you would expect that, under

5 alternative C, some of these 39.5 million people

6 you actually would have been able to have linked

7 to administrative records because your survey

8 responses to the census, if you did include the

9 citizenship question, would be higher quality,

10 correct?

11 A Yes.

12 Q Now, some of these 39.5 million people,

13 you're not going to be able to link to

14 administrative records under alternative C or

15 alternative D, correct?

16 A Correct.

17 Q Under alternative C, for the people that

18 you can't link to administrative records, the plan

19 is you're going to model or impute the citizenship

20 status --

21 A Which alternative, I'm sorry?

22 Q Alternative C. Under alternative C, for

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1 that subset of people who are not matchable to  
2 administrative records, the Census Bureau's plan  
3 would be to model or impute the citizenship status  
4 of those people, correct?

5 A Correct.

6 Q Under alternative D, however, if you  
7 can't match someone to the administrative record,  
8 but you have a survey response, there's no  
9 scientifically defensible method for rejecting  
10 that survey response, correct?

11 A Correct.

12 Q So under alternative D, just so we're  
13 clear, you get a survey response on citizenship  
14 and no administrative record; you're stuck using  
15 the survey response, correct?

16 A We would use the survey response.

17 Q So key difference between C and D for  
18 these people who are not matchable to  
19 administrative records and don't give you a survey  
20 response under D, under C, you impute their  
21 citizenship status; under D, you use the survey  
22 response, correct?

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1           A       Yes.

2           Q       There is no reason to think, Dr. Abowd,  
3       that for this group of unmatched people, that on  
4       average the survey response about citizenship is  
5       going to be more accurate than the imputation  
6       method that you would use under alternative C,  
7       correct?

8           A       Correct.

9           Q       Dr. Abowd, if someone argued that  
10      alternative D was justified because alternative C  
11      requires the imputation of citizenship status of  
12      people who lack administrative records, would the  
13      Census Bureau agree with or disagree with that  
14      argument?

15                   MR. EHRLICH:   Objection.   Form.

16                   THE WITNESS:   Disagree.

17       BY MR. HO:

18           Q       Has the Census Bureau communicated to the  
19       Commerce Department that it disagrees with the  
20       notion that alternative D is justified because  
21       alternative C requires the imputation of  
22       citizenship status for some people?

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1           A       Is the question have we communicated  
2 consistently our preference for C as opposed to D?

3           Q       It's a more specific question than  
4 that --

5           A       Okay.

6           Q       -- Dr. Abowd. Has the Census Bureau  
7 specifically communicated its rejection of the  
8 argument that alternative D is better than  
9 alternative C because alternative C requires  
10 imputation of citizenship status of people for  
11 whom there is no linked administrative record?

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12          A       So I'm not sure how to answer that  
13 question because I don't know that the advice ever  
14 took that specific form. We have consistently  
15 communicated that the modeled response was better  
16 than the survey responses in the unlinked data.

17          Q       Okay. So the modeled responses under  
18 alternative C for the group of people who can't be  
19 matched to citizenship records, in the Census  
20 Bureau's view, that's more accurate than the  
21 self-responses about citizenship that you would  
22 get from adding the citizenship question to the

1 survey?

2 A Yes.

3 Q Okay. Have you heard Commerce Department  
4 officials opine that alternative D is better than  
5 alternative C because alternative C requires the  
6 imputation of citizenship status of people who  
7 can't be linked to administrative records?

8 A Yes.

9 Q Have you heard Earl Comstock offer that  
10 opinion?

11 A Yes.

12 Q Do you disagree with that opinion? Does  
13 the Census Bureau disagree with that opinion?

14 A Yes.

15 Q Has the Census Bureau communicated its  
16 disagreement of that opinion to Mr. Comstock?

17 A Yes.

18 Q If Mr. Comstock said that the Census  
19 Bureau never communicated its disagreement with  
20 that opinion, would Mr. Comstock be wrong?

21 MR. EHRLICH: Objection. Form.

22 THE WITNESS: As far as I know, yes.

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1 because Acting Director Jarmin and Acting Deputy  
2 Director Lamas and Special Assistant to the  
3 Director Christa Jones were in daily contact with  
4 the Under Secretary and with the Secretary's  
5 staff.

6 And we were in the process of developing  
7 the numbers that you've asked me about that appear  
8 in the technical paper in support of the  
9 discussion about the difference between  
10 alternative C and alternative D. I didn't  
11 personally communicate.

12 BY MR. HO:

13 Q But to be clear, the Census Bureau  
14 communicated its disagreement with alternative D  
15 before the Secretary issued his decision  
16 memorandum to include the citizenship question in  
17 late March 2018, correct?

18 A Yes.

19 Q I want to ask you one question --  
20 follow-up question about a line in the white  
21 paper, page 41, last paragraph, the sentence about  
22 a third of the way down that begins with,

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1 "Households deciding."

2 A Page?

3 Q 41, last paragraph.

4 A Yes.

5 Q "Households deciding not to self-respond  
6 because of the citizenship question are likely to  
7 refuse to cooperate with enumerators coming to  
8 their door in NRFU, resulting in the use of  
9 neighbors as proxy respondents on their behalf."

10 I believe you testified that the Census  
11 Bureau agrees with part of that statement. What's  
12 the part that the Census Bureau disagrees with?

13 A So the Census Bureau would say that  
14 qualitative evidence suggests that this sentence  
15 is correct, and the problem is that the  
16 qualitative evidence is difficult to generalize,  
17 but we wouldn't ignore it. And so we would say  
18 the best evidence we have suggests that this  
19 sentence is correct, but it's not as strong as the  
20 evidence that we have when we're able to do both  
21 qualitative and quantitative analyses.

22 (Abowd Deposition Exhibit Number 27 was

1 marked for identification.)

2 BY MR. HO:

3 Q I want to ask you about a document,  
4 Exhibit -- that has been marked as Exhibit 27, the  
5 title of which is, Proposed content test on  
6 citizenship question. This document sets forth a  
7 proposal for two different RCTs for the  
8 citizenship question on the census, correct?

9 A It's one RCT with two different  
10 precisions of estimation.

11 Q And the RCT, as proposed here, would have  
12 taken six weeks to collect the data, correct?

13 A Correct.

14 Q And the proposal was to initiate the RCT  
15 in either November of 2018 or February of 2019,  
16 correct?

17 A Correct.

18 Q In either case, the RCT could have been  
19 completed before census forms are due to be  
20 printed, correct?

21 A Correct.

22 Q The cost of this proposal, there are two

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1 variations on it, but it ranges from 2 million for  
2 one option to 4.1 million for the other option,  
3 correct?

4 A Correct.

5 Q Does the Census Bureau have the money to  
6 conduct either option?

7 A Yes.

8 Q This proposal was rejected by a group of  
9 decision-makers, including Dr. Lamas, Dr. Jarmin  
10 and Under Secretary Karen Dunn Kelley, correct?

11 A That is what I testified, yes.

12 Q Is it your understanding that the  
13 proposal was rejected by a different  
14 decision-maker than those three people?

15 A I wasn't in the conversation. I'm  
16 reporting it based on a summary given to me by  
17 Dr. Jarmin and Lamas.

18 Q Is it the Census Bureau's understanding  
19 that these three individuals jointly made the  
20 decision to reject the RCT proposal?

21 A Yes.

22 Q What is the Census Bureau's understanding

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1 headquarters staff time devoted to the experiment.

2 So an active resource allocation decision  
3 was made that that staff time would be better  
4 spent doing the activities that it would be able  
5 to do if we didn't do this experiment.

6 Q If you had conducted the RCT, you would  
7 have had quantitative data on how the citizenship  
8 question would perform in the context of the  
9 decennial enumeration questionnaire in terms of  
10 response rates, correct?

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11 MR. EHRLICH: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. HO:

14 Q And if the RCT like this had been  
15 performed, you would have had quantitative data on  
16 how well NRFU efforts could have addressed a  
17 decline in self-response resulting from the  
18 addition of the citizenship question in the census  
19 enumeration questionnaire, correct?

20 MR. EHRLICH: Objection. Form.

21 THE WITNESS: No.

22 BY MR. HO:

1 will be forced to spend, and staff time, due to  
2 the citizenship question being included on the  
3 decennial questionnaire given the utility of the  
4 data that will be on it?

5 A The Census Bureau has been instructed to  
6 include a citizenship question on the 2020 census  
7 and has attempted to quantify the consequences of  
8 that for the operations of the 2020 census. That  
9 quantification suggests increases in the  
10 non-response follow-up costs and a deterioration  
11 in the quality of the response data. And we are  
12 prepared to conduct the census with those extra  
13 resources in NRFU and taking account of the change  
14 in the quality of the data.

15 Q Dr. Abowd, you testified that one of the  
16 reasons why the Census Bureau rejected the RCT  
17 proposal is that it didn't make sense from a  
18 cost-benefit perspective, correct, in the view of  
19 the Census Bureau?

20 A Correct.

21 Q In the view of the Census Bureau, does it  
22 make sense from a cost-benefit perspective to add

1 the citizenship question to the census?

2 A It has been our consistent recommendation  
3 not to do so.

4 Q Would the Census Bureau welcome a  
5 decision from a court of law relieving the Census  
6 Bureau of the obligation to include a citizenship  
7 question on the 2020 census enumeration  
8 questionnaire?

9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: The Census Bureau is  
11 prepared to conduct the 2020 census with or  
12 without the citizenship question as instructed by  
13 the Secretary, Congress or the courts, depending  
14 upon the final determination.

15 BY MR. HO:

16 Q Given the Census Bureau's views about the  
17 cost benefits -- the costs and benefits of  
18 including the citizenship question, would it be  
19 desirable, from the Census Bureau's perspective,  
20 from a cost-benefit perspective, if a court issued  
21 a ruling stating that the Census Bureau no longer  
22 had to include a citizenship question on the

1 (Whereupon, a short recess was taken.)

2 (Abowd Deposition Exhibit Numbers 28 and  
3 29 were marked for identification.)

4 THE VIDEOGRAPHER: Back on the record at  
5 11:24.

6 EXAMINATION BY COUNSEL FOR

7 THE STATE OF NEW YORK

8 BY MS. FIDLER:

9 Q Good morning, Dr. Abowd. I'm Danielle  
10 Fidler with the New York attorney general's office  
11 representing the State of New York in this matter.

12 A Hi.

13 Q We just wanted to -- we had asked you,  
14 before we took a break, about trying to get a  
15 sense -- because a court will certainly need to  
16 know the answer -- of how long it has to decide  
17 this matter. And so does the Census Bureau --  
18 given existing resources, what's the drop-dead  
19 date by which the Census Bureau could guarantee  
20 implementation of the 2020 census without a  
21 citizenship question?

22 A So I did check. I actually asked the

1 acting director to give me an answer that is the  
2 agency's answer. With existing resources,  
3 June 30th of 2019 is the content lock-down date.  
4 With exceptional effort and additional resources,  
5 October 31st, 2019 is the final date. Any date  
6 after that would require major redesigns in the  
7 2020 census, and some might require congressional  
8 authorization to change the census date.

9 Q I'd like to turn to what has been marked  
10 in advance as Exhibit 28. You have it before you.  
11 It's the 2020 census -- census barrier attitudes  
12 and motivators survey, CBAMS, high-level findings,  
13 dated August 29th, 2018. Are you familiar with  
14 this document?

15 A I have seen this document before. I  
16 haven't reviewed it.

17 Q Can you please describe what the census  
18 barriers, attitudes and motivators surveys are?

19 A We expand that acronym differently in  
20 some places. So there's the census barrier,  
21 attitudes and motivators studies. One component  
22 was survey and one component was focus group.

1           So the survey component was a probability  
2           sample of 50,000 households, of which 17,000  
3           responded. And the focus group component was a  
4           series of 42 focus groups that were conducted.  
5           And they have both been entitled CBAMS. So --  
6           this is about the survey.

7           Q       Okay. How is the information from the  
8           CBAMS used by the Census Bureau?

9           A       The primary reason for conducting the  
10          CBAMS is to inform the communication -- integrated  
11          partnership and communication program in the  
12          development of the partnership materials and the  
13          communication materials. It is a part -- CBAMS,  
14          both the survey and the focus groups, are a part  
15          of the integrated communication contract. And  
16          Young & Rubicam is the prime contractor on that.

17          Q       And that plan actually does form a  
18          significant part of the Bureau's NRFU plan,  
19          correct?

20                 MR. EHRLICH: Objection. Form.

21                 THE WITNESS: So the integrated  
22          partnership and communications program runs

1 to be quantitative data?

2 A Yes.

3 Q And would you consider the focus group  
4 responses to be qualitative data?

5 A Yes.

6 Q And does the bureau find the findings  
7 from the CBAM, both -- well, we'll start with the  
8 quantitative data -- to be generalizable in its  
9 conclusions about the questions that it's seeking  
10 to answer?

11 A We found, in advance of the 2010 census,  
12 that the much more limited CBAMS survey that we  
13 ran at that time provided actionable information  
14 that informed and improved the communication and  
15 partnership campaign during that census. And  
16 that's what we expect from the survey and the  
17 focus group components this time.

18 Q Okay. And I'd like to have you take a  
19 look at what's been marked as Exhibit 29. This  
20 is -- it starts with administrative record 13025  
21 at the bottom. And the first page says, 2020  
22 CBAMS focus groups - audience summary report.



1 Have you seen this document before?

2 A Yes.

3 Q Okay. Is it -- these are summary reports  
4 of the focus groups; is that correct?

5 A That's correct.

6 Q And is this -- is information from these  
7 focus groups summarized in Exhibit 28, the  
8 PowerPoint?

9 A I'm going to have to look. I didn't  
10 think so, but I might be wrong.

11 Yes, it is.

12 Q Okay.

13 A So the cover of this presentation should  
14 say survey and focus groups.

15 Q Thank you. I'd like to turn to -- let's  
16 see. There's a slide -- it's slide 5. The Bates  
17 number is COM\_DIS00010674. And the title is,  
18 "Distrust in census and government may complicate  
19 outreach to some communities."

20 Have you found that page?

21 A Yes.

22 Q Okay. Just as a background question, are

1 there any revised or more recent versions of this  
2 PowerPoint that you know of?

3 A Not that I'm aware of.

4 Q Okay. The last bullet states that a  
5 number of focus group participants -- or the  
6 second to the last bullet -- "A number of focus  
7 group participants responded negatively to adding  
8 the citizenship question, most notably Spanish  
9 (U.S. mainland) as well as Vietnamese, Chinese,  
10 NHPI, and members of the female MENA group."

11 What does that mean?

12 A So the way that we draw conclusions from  
13 focus groups is that we follow a similar protocol  
14 in stimulating conversation in each focus group,  
15 take the transcripts from those focus groups and  
16 double-code the responses, and then look for  
17 common answers across the focus groups, and then  
18 see what was the target recruitment group for that  
19 set of focus groups that had common responses.  
20 And that's what's being characterized here.

21 So that people recruited in the focus  
22 groups who mentioned citizenship as a barrier came

1 from focus groups that were recruited to have  
2 Chinese, Vietnamese, Spanish, Native Hawaiian and  
3 Pacific Islander, and MENA, Middle Eastern and  
4 North Africa.

5 Q And why was this bullet included in the  
6 PowerPoint?

7 A I believe to draw the attention of people  
8 who are using this to -- that finding of the focus  
9 groups.

10 Q And what significance, if any, does the  
11 Census Bureau accord to these focus groups with  
12 respect to self-response rates on the 2020 census?

13 A I think I've been asked this before, so  
14 I'm trying to give a consistent answer. The  
15 quantitative evidence from the survey comes from  
16 probability samples. And the recruitment targets  
17 in the focus groups are from groups that we have  
18 trouble getting responses to the probability  
19 samples. So they're complementary in that sense.  
20 We learn from the focus groups because we  
21 try to be successful in recruiting into the focus  
22 groups people who are hard to count, and in fact,

1 you actually had to score high on a hard-to-count  
2 index in order to be recruited into these focus  
3 groups. That basically means that they're the  
4 groups that are most difficult to get responses in  
5 the survey, not necessarily for the same reasons,  
6 but as a general category.

7 And so we view this as being able to  
8 interview the people that either didn't respond or  
9 were very reluctant to respond to a survey  
10 component and attempt to discover what it is about  
11 the process or about any other aspect of the data  
12 collection activity that makes them reluctant to  
13 respond.

14 And then we try to design a partnership  
15 and communication campaign that addresses those  
16 issues, run additional tests, qualitative tests,  
17 to see if the messaging is successful in  
18 overcoming the barriers.

19 Q Thank you. Were you aware that this  
20 document was saved electronically under the file  
21 name 2020 CBAMS preliminary findings deck for  
22 Under Secretary 8/29/18?

1 A No.

2 Q Was this PowerPoint presented to the  
3 Under Secretary for Commerce?

4 A To the --

5 Q Was this PowerPoint presented to the  
6 Under Secretary, Ms. Dunn Kelley?

7 A I believe so, yes.

8 Q Okay. Anyone else that you know of?

9 A I don't have personal knowledge other  
10 than the -- it was presented to the Secretary as  
11 well.

12 Q Okay. And do you know when it was  
13 presented to them?

14 A I don't.

15 Q Roughly?

16 A Sorry?

17 Q Roughly, even?

18 A Within the last month.

19 Q Okay. And what was the context for  
20 presenting it to them?

21 A The Secretary -- the presentation that I  
22 know about is the regular meeting that the

401;  
403

1 Q And is there -- was there a response that  
2 was noted?

3 A I think that that's a more appropriate  
4 question for the regular attendees of this  
5 meeting. There was a discussion. I was in the  
6 room. I did hear the discussion. I don't know  
7 what constitutes a response in that context  
8 because I -- that's the only one I've ever been in  
9 and I wasn't there as a part of this discussion.

10 So I know it was presented to him. And  
11 if you would like me to clarify, I will clarify.

12 The Secretary was looking for indications  
13 from the team that they were responding in the  
14 development of the communication and partnership  
15 campaign -- there was -- there were people from  
16 the partnership campaign there, too -- responsive  
17 to this information. And the questions indicated  
18 that he thought that we should be responsive to  
19 this information. And the partnership and  
20 communication people both communicated that they  
21 intended to be responsive to it.

22 But this was the first presentation of

1 what we learned, and now the intensive effort to  
2 design both the partnership materials and the  
3 communication campaign was going to kick off and  
4 would be informed by this.

5 Q And since you were in the room, was there  
6 concern expressed about this particular -- the  
7 response to the citizenship question to these  
8 groups? Was that highlighted -- did the Secretary  
9 or Under Secretary have a concern about this?

401;  
403

10 A I'm very reluctant to characterize either  
11 the Under Secretary or the Secretary's actions as  
12 a concern or not a concern. Attention was paid.  
13 It was acknowledged to be a challenge in  
14 conducting the census. And much more of the  
15 attention was focused on how this information  
16 would be used to inform the partnership and  
17 communication campaign.

18 Q Okay. What, if anything, was discussed  
19 with respect to the negative focus group response  
20 to the citizenship question? Like, any -- was  
21 there anything in particular beyond what you've  
22 discussed right now?

1 A Time was spent on that slide --

2 Q Okay.

3 A -- and attention was drawn to that fact  
4 and it was discussed.

5 Q Okay. Turning to Exhibit 28, which is  
6 the summary -- I'm sorry, Exhibit 29, my  
7 apologies -- the summary of the CBAM focus groups.  
8 Could you please go to what's -- and that starts  
9 with the -- 13025. If you could please go to  
10 13045. This is titled at the top the 2020 CBAMS  
11 focus groups - audience summary report for  
12 Spanish, U.S. mainland. Do you see that?

13 A Yes.

14 Q Okay. And if you go to the next page,  
15 which is 13046, this is the summary of emerging  
16 themes from that focus group, correct?

17 A Okay.

18 Q And this is prepared by the team after  
19 having watched the focus group, correct?

20 A And processed the transcripts.

21 Q Okay. If you go down to the third  
22 emboldened sentence, it says, "The citizenship



1 question is a determining factor for  
2 participation." Then it says, "All four Spanish,  
3 U.S. mainland, focus groups took place after the  
4 March 27, 2018 announcement that the 2020 census  
5 will include a question on citizenship.  
6 Participants in all locations mentioned the  
7 citizenship question before the moderator asked  
8 about, except for Houston Group 1 participants.  
9 Most participants said that though they personally  
10 are citizens or legal residents and are not afraid  
11 to answer the citizenship question, they know many  
12 others who will not fill out the question or the  
13 form altogether out of fear. While all  
14 participants expressed the desire to be counted,  
15 fear of deportation outweighs any benefits."

16 Isn't this a strong indication that the  
17 citizenship question will drive down participation  
18 significantly among this community?

19 MR. EHRLICH: Objection. Form.

20 THE WITNESS: This is a focus group  
21 indication from a hard-to-count population that  
22 the citizenship question is viewed as extremely

1 problematic in that population.

2 BY MS. FIDLER:

3 Q And aren't people afraid of deportation  
4 the least likely to participate at all in the  
5 census or to be swayed by NRFU efforts?

6 A I'm not prepared to say the least likely  
7 to participate at all. I'm prepared to  
8 acknowledge that they're an extremely difficult  
9 group to count.

10 Q Isn't it reasonable to conclude that if  
11 there's a fear of deportation, that NRFU efforts  
12 are unlikely to be successful?

13 MR. EHRLICH: Objection. Form.

14 THE WITNESS: No.

15 BY MS. FIDLER:

16 Q And why not?

17 A We define NRFU success as our ability to  
18 characterize a housing address as vacant, occupied  
19 or non-existent, and to process the information  
20 about the occupants when we deem it occupied.

21 Q In light of the concerns raised by this  
22 community, doesn't this indicate that if there's a

1 citizenship question on the census, trusted  
2 partners will have additional challenges in  
3 convincing this community to participate?

4 A Yes.

5 Q Wasn't it also indicated from this focus  
6 group that this community does care about  
7 participation in the census?

8 A Yes.

9 Q That they would like to participate in  
10 the census, in fact?

11 A That's a reasonable conclusion.

12 Q They expressed that they understand the  
13 benefits to their community of participating in  
14 the census; isn't that correct?

15 A Yes.

16 Q And so it indicates that the community  
17 would participate -- would be more likely to  
18 participate in the census if there was not a  
19 citizenship question, correct?

20 A Should I interpret "participate" to mean  
21 self-respond?

22 Q Yes, self-response.

1 A Yes.

2 Q It mentions that, in this focus group, on  
3 the fear of -- the paragraph above the one we read  
4 states, in the middle of that paragraph,  
5 "Additionally, while there were suggestions of  
6 trusted voices, there does not seem to be a single  
7 trusted voice that could mitigate their distrust  
8 of the government to uphold the promise of  
9 confidentiality."

10 So doesn't that indicate that trusted  
11 partners will have a difficult time convincing  
12 this community to participate in the census with a  
13 citizenship question?

14 A Again, if participate means  
15 self-response --

16 Q Self-response.)

17 A -- yes.

18 Q Just generally speaking, this information  
19 is noted in all of these -- all of the summaries,  
20 that -- by way of background, that the information  
21 will be used to inform the 2020 census  
22 communications campaign. Has that already -- has

1 this information already been incorporated into  
2 the integrated communication plan?

3 A The -- team Y&R, in collaboration with  
4 its census staff, with census staff who are  
5 working with them, were taking this information  
6 immediately into the design of the media and  
7 partnership materials which are -- they're in  
8 content design phase now.

9 Q Okay. So then is there anything we could  
10 look to currently that would reflect this -- the  
11 influence of this information?

12 A Do you mean have they produced any  
13 materials?

14 Q Correct.

15 A None that I'm aware of.

16 Q Okay. On page 13031, in the fourth major  
17 heading, the last sentence --

18 A Community benefits?

19 Q Community benefits. The last sentence of  
20 that paragraph says, "In addition, since many  
21 participants had varying grasps about census  
22 outcomes, the more they understood how the census

1 drove resources and services to any given  
2 community, the greater they felt compelled to  
3 participate."

4 This is an indication that the moderators  
5 indicate that local counts, local census counts,  
6 are critical to ensuring representative levels of  
7 funding for particular communities, and they  
8 convey this information to the participants,  
9 correct?

10 A Yes.

11 Q And part of the reason the Census Bureau  
12 is trying to inform people of this connection  
13 between the census and the funding is because in  
14 order to ensure adequate funding, communities need  
15 accurate enumeration, correct?

16 MR. EHRLICH: Objection. Form.

17 THE WITNESS: Correct.

18 BY MS. FIDLER:

19 Q And many of the respondents in the CBAM  
20 summaries indicate they already know about this  
21 connection, correct?

22 A Your characterization. I haven't read

1 through all the data, but I won't dispute it.

2 Q Okay. The Census Bureau acknowledges,  
3 and you mentioned earlier, that there are local  
4 undercounts for many hard-to-reach populations  
5 that can exist and have sometimes persisted for  
6 some time, for example, with the Hispanic  
7 community, correct?

8 MR. EHRLICH: Objection. Form.

9 THE WITNESS: So I don't think I said  
10 that. I said that we had documented differential  
11 net undercounts at the national level.

12 BY MS. FIDLER:

13 Q And those -- at the national level and  
14 there can -- and there are -- there's data to show  
15 that there have been persistent undercounts of the  
16 Latin -- of the Hispanic community in particular,  
17 correct?

18 MR. EHRLICH: Objection. Form.

19 THE WITNESS: At the national level,  
20 correct.

21 BY MS. FIDLER:

22 Q With regard to local population, if there

1 are undercounts, funding for things like schools  
2 and Medicare that rely on census population  
3 numbers can be decreased, correct?

4 MR. EHRLICH: Objection. Form.

5 THE WITNESS: The relation between  
6 population measures for local communities and  
7 funding is sometimes direct and sometimes  
8 indirect. In most cases, having a larger  
9 population implies a larger share of the total  
10 resource being allocated.

11 BY MS. FIDLER:

12 Q Many respondents throughout the study  
13 indicated an understanding that information is  
14 required to be kept confidential, but also  
15 indicated a fear that this could change and be  
16 used against them in the future. Are you familiar  
17 with that?

18 A Yes.

19 Q Is that a concern of the Census Bureau?

20 A The Census Bureau is not concerned about  
21 the current confidentiality protections embodied  
22 in title 13. Like any law, a law can be modified,



1 amended. Statistical agencies in general, and the  
2 Census Bureau among them, would be extremely  
3 concerned if the respondent confidentiality  
4 clauses were removed from title 13.

5 Q For those who have this fear about the  
6 potential for change, aren't those who have this  
7 belief less likely to self-respond to the census  
8 or to respond to an enumerator?

9 MR. EHRLICH: Objection. Form.

10 THE WITNESS: I'm willing to summarize  
11 both the quantitative and the qualitative evidence  
12 suggesting that the groups that you have isolated  
13 in your question are less likely to self-respond.

14 BY MS. FIDLER:

15 Q On page 13040 in this summary, one of the  
16 emerging themes identified -- and this is a native  
17 Hawaiian and Pacific Islander, but it comes up  
18 elsewhere as well -- is multigenerational housing  
19 as a potential barrier. "Participants expressed  
20 concerns about sharing information about the  
21 number of people who live in their households. It  
22 is a common practice on the islands to live with

1 extended family or to have more people living in  
2 their house than are listed on the lease or  
3 official documents. These concerns present a  
4 potential barrier for the NHPI audience, as some  
5 participants were worried about landlords finding  
6 out the number of people living in their  
7 residence."

8 This is another area where you could  
9 potentially have either a complete non-response,  
10 non-self-response or, as was described earlier,  
11 you could have a census response that did not  
12 include all of the members of the household,  
13 correct?

14 A Yes.

15 Q And when this occurs, the members that  
16 are not identified are the ones least likely to be  
17 found via imputation or other methods, correct?  
18 They're the most likely to be omitted as part of a  
19 gross omission.

20 A Could you unpack that question, please?

21 Q Sure. For the -- for the households that  
22 have multigenerational housing, as described here,

1 who do not want to disclose all of the members of  
2 their household, to the extent that they do not do  
3 so, that is where you are likely to have  
4 omissions, correct?

5 A That is where nothing in the current  
6 census protocol would correct that particular  
7 omission.

8 Q And these types of omissions can lead to  
9 localized or -- undercounts, correct?

10 MR. EHRLICH: Objection. Form.

11 THE WITNESS: So net undercount is the  
12 difference between omissions and erroneous  
13 enumerations and whole-person census imputations.  
14 And these kinds of errors can affect both sides of  
15 that equation.

16 BY MS. FIDLER:

17 Q For those who have these  
18 multigenerational households, they're the -- it's  
19 unlikely that their landlord would be able to  
20 provide information about them, correct, because  
21 they wouldn't know?

22 MR. EHRLICH: Objection. Form.

1 BY MS. FIDLER:

2 Q Let me back up. This is a focus group  
3 that's describing that they do not want to provide  
4 information because it is their understanding that  
5 their landlords do not know that these numbers are  
6 living in their household, correct?

7 A Understood, yes.

8 Q And in those cases when the census is  
9 relying on proxy information, in part -- one of  
10 the sources for proxy information are landlords,  
11 correct, and landlord records, correct?

12 A Yes.

13 Q But in those cases where the landlords do  
14 not know about the multigenerational housing, that  
15 information would not be there, correct?

16 A That's a reasonable presumption, yes.

17 Q And so for subpopulations where  
18 multigenerational housing is common, this could  
19 present a problem for an accurate count of that  
20 subpopulation, correct?

21 A Yes.

22 MR. EHRLICH: Objection. Form.

1 THE WITNESS: Yes.

2 BY MS. FIDLER:

3 Q This is also an area where reliance on  
4 trusted partners is actually quite helpful for the  
5 Census Bureau, correct?

6 A I'm sorry. I was asking Mr. Ehrlich a  
7 question.

8 Q The -- the types of housing where there's  
9 multigenerational housing or people living in  
10 basements is an area where trusted partners are  
11 actually critical to helping the census get  
12 accurate information, correct?

13 A They're very important, yes.

14 Q And as we've discussed, trusted partners  
15 may have a difficult time convincing these  
16 communities to provide that information if there's  
17 a citizenship question on the census, correct?

18 MR. EHRLICH: Objection. Form.

19 THE WITNESS: Yes.

20 BY MS. FIDLER:

21 Q How do omissions affect both sides --

22 MR. EHRLICH: Counsel, can I just

1 interrupt for one second? I think we've reached  
2 our time. Are you nearing an end of the  
3 questioning?

4 MS. FIDLER: Yeah. I've got, like, one  
5 question, possibly two.

6 MR. EHRLICH: Okay. Because I think  
7 Dr. Abowd also needs a break anyway. So it works  
8 out.

9 MS. FIDLER: Thank you.

10 BY MS. FIDLER:

11 Q How do omissions affect both sides of net  
12 undercount calculations?

13 A No, what I said is that net undercount is  
14 the difference between omissions and erroneous  
15 enumerations, plus whole census [sic] imputations.  
16 And the enumeration difficulties that you were  
17 asking me about can both affect gross omissions  
18 and erroneous enumerations and whole-person  
19 imputations; since there's a difference, they can  
20 cancel.

21 MS. FIDLER: That's actually my last  
22 question. Thank you so much for your patience.

1 New York Immigration Coalition v. US Dept.of Commerce  
2 John Abowd, 30(b)(6)

3 ACKNOWLEDGMENT OF DEPONENT

4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the foregoing  
6 pages and that the same is a correct  
7 transcription of the answers given by  
8 me to the questions therein propounded,  
9 except for the corrections or changes in form  
10 or substance, if any, noted in the attached  
11 Errata Sheet.

12  
13 \_\_\_\_\_  
14 DATE

13 \_\_\_\_\_  
14 SIGNATURE

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22 3028797

# EXHIBIT C



# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
Defendants.

-----  
Global  
Objection: Washington, D.C.  
401; 403  
Thursday, August 30, 2018

Deposition of:

EARL COMSTOCK

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSEN,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:08 a.m., when were present on  
behalf of the respective parties:

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(Exhibits attached to transcript.)

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14 [REDACTED]

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VIDEOGRAPHER: Dan Reidy



## P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:01 a.m. on Thursday, August 30, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones or place them away from the microphones, as that can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to going off the record.

This is Media Unit 1 of the video recorded deposition of Earl Comstock to be taken by counsel for the plaintiff in the matter of the New York Immigration Coalition, et al., v. The United States Department of Commerce, et al. This case is filed in the United States District Court for the Southern District of New York. This deposition is being held at the law office of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

1           My name is Dan Reidy from the firm  
2           Veritext Legal Solutions, and I am the  
3           videographer. The court reporter is Karen  
4           Jorgenson from Veritext Legal Solutions.

5           I am not authorized to administer an  
6           oath. I am not related to any party in this  
7           action, nor am I financially interested in the  
8           outcome.

9           Also, counsel appearances will be noted  
10          on the stenographic report rather than orally at  
11          this time.

12          Will the court reporter please swear in  
13          the witness?

14                               EARL COMSTOCK,  
15          called as a witness, and having been first duly  
16          sworn, was examined and testified as follows:

17               THE WITNESS: I do.

18               EXAMINATION BY MR. COLANGELO:

19           Q     Please state your name and work address.

20           A     Earl Comstock, U.S. Department of  
21           Commerce.

22           Q     And we met a minute ago, but for the

1           And are you currently admitted to the  
2 practice?

3           A     In the District, yes.

4           Q     In D.C.

5           Is your registration active or inactive?

6           A     I believe it's active. I'd have to go  
7 double-check.

8           Q     Okay. And are you admitted in any other  
9 states?

10          A     I was admitted in Alaska and that's  
11 inactive.

12               (Thereupon, the court reporter  
13 clarified.)

14 BY MR. COLANGELO:

15          Q     And tell me what your college degree  
16 field of study was?

17          A     Political science.

18          Q     Do you have any education training or  
19 experience in statistics?

20          A     Did -- well, George Mason University does  
21 accounting, statistics and economics for lawyers,  
22 which is a required part of the course. So I had

1 two years of that, and also had an environmental  
2 science minor at UCSB, so did a number of  
3 statistics and chemistry and biology courses in  
4 relation to that.

5 Q And by in relation to that, you mean in  
6 relation to the environmental science degree?

7 A Correct.

8 Q Okay. Do you have any education,  
9 training or experience in survey methodology?

10 A No.

11 Q Do you have any education, training or  
12 experience in demography?

13 A Other than basic introduction to  
14 demography, no.

15 Q What do you mean by introduction?

16 A Well, what you take in an undergraduate  
17 course that covers demography.

18 Q Okay. Do you have any education,  
19 training or experience in voting rights law?

20 A No.

21 Q Do you have any education training or  
22 experience in redistricting?

1 A No.

2 Q Do you have any education, training or  
3 experience in election law?

4 A Again, other than as an attorney and the  
5 ability to read laws, no.

6 Q Okay. By as an attorney and the ability  
7 to read laws, you mean if you needed to read a  
8 law, you could?

9 A Meaning if I had read a statute related  
10 to those, then I would be able to understand it,  
11 yes.

12 Q But you've never studied election law?

13 A I've never studied election law.

14 Q You've never practiced election law?

15 A No.

16 Q Okay. Were -- between November 2016 and  
17 February 2017, you were a member of the  
18 presidential transition team?

19 A From November -- yeah, just after  
20 Thanksgiving until I began working for the  
21 Department of Commerce, yes.

22 Q Okay. And when did you begin working at

1 A Yes.

2 Q Do you remember a meeting that you and  
3 Wendy and the Secretary attended on the 18th after  
4 the confirmation hearing?

5 A Not with any particularity, no.

6 Q Okay. Mr. Comstock, tell me what your  
7 current position is?

8 A I'm the deputy chief of staff and  
9 director of policy.

10 Q Deputy chief of staff and director of  
11 policy.

12 When did you become the director of  
13 policy?

14 A On January 31st --

15 Q January 31st.

16 A -- 2017.

17 Q The -- was January 31, 2017 your first  
18 day in the office at the Commerce Department?

19 A Yes. If I'm recalling correctly, that  
20 that was Monday, yes. It was the 30th or 31st.  
21 It was whatever the Monday was at the end of  
22 January.

1 Q Other than the personnel onboarding, did  
2 you have conversations --

3 A No.

4 Q -- with anyone at the Commerce Department  
5 between January 20th and January 30th of 2017?

6 A No.

7 Q Did you have any conversations with  
8 Secretary Ross between January 20th and  
9 January 30th of 2017?

10 A Nothing particularly that I recall, but  
11 I'm sure I talked to him, yes.

12 Q Okay. You mentioned that your title is  
13 deputy chief of staff and director of policy.

14 When did you became deputy chief of  
15 staff?

16 A In April of this year.

17 Q So from January 30, 2017 until  
18 April 2018, you were director of policy?

19 A Correct.

20 Q Is director of policy a position within  
21 the Office of the Secretary?

22 A Yes.

1 Q And is that the same as director of  
2 policy and strategic planning?

3 A Correct.

4 Q Who do you report to?

5 A The Secretary.

6 Q Directly to the Secretary?

7 A Well, and to the chief of staff and to  
8 the deputy secretary.

9 Q Okay. Was there a chief of staff on  
10 January 30, 2017?

11 A There was not.

12 Q Okay. So until there was a chief of  
13 staff, who would you say you reported to?

14 A Well, until the Secretary came on board,  
15 sort of no one.

16 Q Okay.

17 A No. The -- the acting deputy secretary,  
18 obviously, was the career official who was in  
19 charge of making any final decisions for the  
20 department, so --

21 Q And can you identify her for the record?

22 A Ellen Herbst.



1 Q 2018?

2 A Sorry. 2017.

3 Q So you mentioned you work on whatever the  
4 Secretary wants you to work on?

5 A Correct.

6 Q How does he identify matters that he  
7 wants you to work on?

8 A He says, Earl, can you get this done? Or  
9 we attend this meeting, and he says, can you  
10 follow up on that?

11 Q And how do you keep the Secretary  
12 informed about what you are doing on important  
13 matters or on assignments that he's given you?

14 A By email, by oral briefing, and sometimes  
15 by memos.

16 Q How do you decide whether you're going to  
17 update Secretary Ross by email, by briefing or by  
18 memo?

19 A Just depends on the time frame, the speed  
20 of which I need to get something to him, how  
21 extensive it is. You know, if there's a lot of  
22 information that it would be helpful for him to

1 A No.

2 Q Please explain.

3 A Well, again, it depends on who you're  
4 talking about at the policy office. If you're  
5 talking about my staff at the policy office, they  
6 do not, as a general rule, develop the policy.  
7 The policy is generally developed by the Secretary  
8 with input from me and with input from them when  
9 needed.

10 Q And not with input from the bureaus?

11 A Well, absolutely. We go back and forth  
12 with the bureaus all the time.

13 Q You mentioned that the individuals in the  
14 policy office monitor specific areas; is that  
15 right?

16 A Correct.

17 Q Do you have somebody assigned to monitor  
18 the Census Bureau?

19 A Yes.

20 Q Who is that?

21 A David Langdon.

22 Q And what is David Langdon's background?

1           A    He is in the Economic & Statistics  
2   Administration and knows -- knows the people down  
3   there, knows how to get stuff done, so --

4           Q    Okay. And did you hire Mr. Langdon?

5           A    I did not.

6           Q    Was he in the policy office when you got  
7   there?

8           A    He was.

9           Q    How often do you interact with the  
10   Census Bureau?

11          A    Directly? Depends on the issue. Like  
12   when we were doing the lifecycle cost estimate,  
13   quite a bit. When we were doing the census -- the  
14   citizenship question, interacted with the staff  
15   there -- the senior staff on a fairly frequent  
16   basis.

17          Q    Do you have any standing meetings with  
18   the Census Bureau?

19          A    No. Well, other than when they come and  
20   brief the Secretary sort of on a monthly basis,  
21   I'll attend those meetings.

22          Q    Okay. I'll come back to the monthly

1 stakeholders?

2 A I take meetings when the Secretary can't,  
3 yes.

4 Q Do you ever take meetings independent of  
5 filling in for the Secretary?

6 A Yeah, on major policy issues I'm working  
7 on.

8 Q Did you meet with outside stakeholders on  
9 the citizenship question?

10 A No.

11 Q You didn't attend any meetings, including  
12 with the Secretary, on the citizenship question --

13 A I --

14 Q -- with outside stakeholders?

15 A With the outside stakeholders groups, no.

16 Q When did you first hear about the notion  
17 of adding a question about citizenship to the  
18 decennial census?

19 A Sometime in -- shortly after the  
20 confirmation.

21 Q And who did you hear it from?

22 A The Secretary.

1 Q And the Secretary was confirmed on  
2 February 28, 2017; is that right?

3 A I -- like I said, you'd have to confirm  
4 that date, but I think that was the date, yes.

5 Q And what did the Secretary tell you about  
6 the idea of adding a question on citizenship to  
7 the census during that first conversation shortly  
8 after his confirmation?

9 A Again, the exact time frame of the  
10 conversation, I can't tell you. It was sometime  
11 in that spring period. I don't recall the  
12 details. I think he simply inquired as to why  
13 don't we have a citizenship question on the  
14 census.

15 Q Okay. And what did you say to him when  
16 he inquired?

17 A Short answer, I don't know. I'll check.

18 Q Okay. And would that interaction be  
19 reflected in any documents?

20 A I don't -- I don't believe so, but it's  
21 possible it's in an email exchange.

22 MR. COLANGELO: Can we mark as Exhibit 1,

1           A     I see it, yes.

2           Q     And I take it that you would assume that  
3     Earl refers to you?

4           A     I'm not aware of another Earl that works  
5     at the department at the moment, so --

6           Q     Okay. Certainly, not another Earl that  
7     works at the Office of Secretary who's a political  
8     appointee?

9           A     Correct.

10          Q     And then Mr. Langdon then says, "Earl is  
11     very" -- underlined very -- "interested and thinks  
12     the Secretary will be, as well."

13                 Do you see that?

14          A     Yes.

15          Q     On February 2nd of 2017 would have been  
16     your fourth day on the job; is that right?

17          A     Yep.

18          Q     Okay. And do you recall telling  
19     Mr. Langdon that you were very interested in  
20     Congressional notification of decennial ACS  
21     topics?

22          A     I recall telling him that we were very

1 interested in the census and getting a briefing on  
2 it.)

3 Q Okay.

4 A I don't specifically recall that, but --

5 Q Were you very interested in the decennial  
6 topics on February 2, 2017?

7 A What probably would have caught my  
8 attention is if we had to notify Congress about  
9 something, I would want to make sure we were up to  
10 speed on what we needed to notify them about.

11 Q As of this date, February 2, 2017, do you  
12 recall if you had already had discussions  
13 regarding adding a citizenship question to the  
14 census?

15 A I don't recall having a discussion before  
16 that.

17 Q Mr. Langdon's email says, quote, it would  
18 make sense for John Thompson to touch on this  
19 topic in his overview briefing and then to have a  
20 follow-up briefing very soon.

21 Was Mr. Thompson the Census Bureau  
22 director at the time?

1           A     Yes.

2           Q     And did that overview briefing take place  
3     that's referred to in this email?

4           A     I imagine it did.

5           Q     Do you remember when that happened?

6           A     I couldn't tell you.

7           Q     Do you keep a calendar?

8           A     Yeah. There's an electronic calendar  
9     somewhere.

10          Q     And your calendar records the meetings  
11     that you attend?

12          A     Generally, yes.

13          Q     Would it typically record a meeting with  
14     the Census director?

15          A     It would depend if somebody sent me a  
16     calendar invite.

17          Q     Would somebody typically send you a  
18     calendar invite for a meeting with the Census  
19     director?

20          A     At that point in time, possibly. Yeah, I  
21     don't know.

22          Q     The email refers, also, to a follow-up



1 Q We'll mark this exhibit Comstock  
2 Exhibit 2.

3 (Plaintiffs' Exhibit 2, Email, was  
4 marked.)

5 BY MR. COLANGELO:

6 Q We are marking as Comstock 2 Document  
7 Bates numbered 2521.

8 Mr. Comstock, take a look at this email.  
9 You've seen this email before, right?

10 A I sent it.

11 Q So that's a yes?

12 A Yes.

13 Q Were you shown this email in preparation  
14 for your deposition today?

15 MR. GARDNER: I'm going to object and  
16 instruct the witness not to answer on the grounds  
17 of attorney work product.

18 I'm happy to let you answer when was the  
19 last time you saw the document.

20 But you're asking about documents counsel  
21 may have shown that would be protected.

22 BY MR. COLANGELO:

1 Q When's the last time you saw this  
2 document, Mr. Comstock?

3 A Yesterday.

4 Q And do you see the subject line of this  
5 email is your question on the census?

6 A Yep.

7 Q Okay. And Secretary Ross was confirmed  
8 on February 28th, I think we agreed; is that  
9 right?

10 A Like I said, if that's the date, yes.

11 Q Okay. So this would have been  
12 Secretary Ross's eleventh day on the job as  
13 Commerce Secretary, give or take?

14 A Approximately, yes.

15 Q And the subject line of this email is  
16 your question on the census?

17 A Right.

18 Q What was the Secretary's question on the  
19 census?

20 A He appeared to have asked whether  
21 undocumented people were counted in the census.

22 Q Okay. And how did he ask you that

1 question?

2 A I don't recall. Probably at a meeting,  
3 possibly following up on a census briefing. I  
4 don't know.

5 Q Have you checked your calendar for  
6 March 10, 2017 recently?

7 A I was going to say I probably haven't  
8 checked it from March 10, 2017 for that particular  
9 date.

10 Q Okay.

11 A By the way, I wanted to add one point.  
12 On the prior document, you need to understand that  
13 at that time, there were a number of questions  
14 that the prior administration had requested be  
15 placed, potentially, on the census that would have  
16 been involved in that notification. So that would  
17 have been a reason of why I would have been  
18 interested in that, on sexual orientation and  
19 gender identity. So that was an issue that was  
20 very at the forefront at the time of what to do  
21 about those requests.

22 Q So let's go back to Exhibit 2, your email

1 to Secretary Ross on Friday, March 10th. Do you  
2 know why the Secretary asked you whether  
3 undocumented people were counted?

4 A I have no idea.

5 Q Okay. Did he ask you whether noncitizen  
6 people were counted for apportionment purposes?

7 A Well, based on the answer, it appears he  
8 might have.

9 Q Appears he might have or appears he did?

10 A I couldn't tell you the answer on that.

11 Q Okay.

12 A I don't recall the question, so --

13 Q Okay. But you sent this email to the  
14 Secretary in response to a question?

15 A Yes.

16 Q And you would have presumably tried to  
17 make your answer responsive to his question?

18 A I generally do that, yes.

19 Q So you think it's likely that his  
20 question was about whether undocumented immigrants  
21 were counted for apportionment purposes?

22 A That's entirely possible, but he might

1 have also just asked do we count undocumented  
2 persons, and this is what I found on the Census  
3 website.

4 Q How do you think you found it on the  
5 Census website?

6 A By typing in census and going to their  
7 website and seeing what their FAQs say.

8 Q So you think you would have gone directly  
9 to the frequently asked questions page?

10 A That would not be unusual for me to do,  
11 yes.

12 Q This link you've identified at  
13 www.census.gov, that's the Census Bureau's  
14 frequently asked web page for Congressional  
15 apportionment; is that right?

16 A Again, without pulling it up, I couldn't  
17 tell you specifically what it says.

18 Q Okay. If I represent to you that if you  
19 pulled up that website, it would say frequently  
20 asked questions for Congressional apportionment,  
21 would that assist you?

22 A I'd be happy to take your word for it.

1 Q So does that assist you in recalling that  
2 the Secretary asked whether noncitizens were  
3 counted for apportionment purposes?

4 A And I have no recollection of the  
5 question, so I can only go by the answer.

6 Q Okay. The email also includes a blog  
7 post from the Wall Street Journal; is that right?

8 A Uh-huh.

9 Q Okay. And your email to the Secretary  
10 says that this blog post, quote, confirms that  
11 neither the 2000s, nor the 2010 census asked about  
12 citizenship?

13 A Correct.

14 Q So does that lead you to conclude that  
15 the Secretary asked about whether the decennial  
16 census asks about citizenship?

17 A That would be a reasonable supposition,  
18 based on the response.

19 Q And this blog post is called the pitfalls  
20 of counting illegal immigrants; is that right?

21 A Yep.

22 Q And were you concerned on March 10, 2017

1 about counting illegal immigrants?

2 A I -- no, not personally.

3 Q Was the Secretary concerned on

4 March 10, 2017 about counting illegal immigrants?

5 A Again, I have no recollection of the  
6 question, so I couldn't speculate as to what his  
7 concern was.

8 Q But you testified that a significant part  
9 of your job function involves answering questions  
10 from the Secretary on issues that matter to him,  
11 right?

12 A Correct.

13 Q And if he asked you a question, you would  
14 try to be responsive?

15 A Generally, yes.

16 Q You wouldn't ordinarily send him  
17 information that wasn't responsive to a question  
18 he asked, would you?

19 A Not -- not characterized this way, no.

20 Q So you testified a minute ago that the  
21 Secretary -- that you first heard about the notion  
22 of adding a question about citizenship to the

1 census when the Secretary raised it with you  
2 shortly after his confirmation. Does this email  
3 indicate to you that it was by March 10th that the  
4 Secretary first raised it with you?

5 A I wouldn't necessarily draw that  
6 conclusion from this email.

7 Q Would you draw the conclusion that it was  
8 later than March 10?

9 A No, I wouldn't. Again, this -- this  
10 question does not directly address -- it's a  
11 question about how -- who do we count, not whether  
12 or not -- and whether there's a citizenship  
13 question. So I don't know at this point whether  
14 he indicated he was interested in such a question,  
15 other than getting the factual information.

16 Q Okay. Who would know when the Secretary  
17 was interested in adding a citizenship question?

18 MR. GARDNER: Objection. Calls for  
19 speculation.

20 BY MR. COLANGELO:

21 Q You can answer.

22 A My counsel just objected, so why can --



1 March of 2017?

2 A Again, not that I recall.

3 Q Let me direct you to the highlighted line  
4 about three-quarters of the way down on the page  
5 that is stamped 2521 -- and we apologize for the  
6 copy quality.

7 A I was going to say --

8 Q This is how the document --

9 A Think you highlighted it so nobody could  
10 read it.

11 Q -- was produced to us.

12 A So this is not a redaction is what you're  
13 telling me?

14 Q Correct. This is not a redaction.

15 A If you can tell me what it says, I'd be  
16 happy to --

17 Q Sure. The highlighted line says, "No  
18 major government survey, including the decennial  
19 census now underway, asks Americans about their  
20 citizenship status."

21 And you see that this blog post is dated  
22 May of 2010, correct?

1 A Uh-huh.

2 Q So the decennial census now underway, do  
3 you understand we refer to --

4 A Would have been the 2010, yeah.

5 Q Remember to please wait for me to finish  
6 my question before you answer.

7 A Sure.

8 Q Did you highlight this line?

9 A Well, unless you did, then I'm assuming I  
10 did.

11 Q I can represent to you we did not  
12 highlight this line.

13 A Okay. Then I will assume that it was  
14 highlighted in the email.

15 Q And why did you highlight this line of  
16 the blog post before sending it to the Secretary?

17 A Well, it appears that the question was  
18 whether or not the citizenship question had been  
19 asked, at least on the 2010 census, and so I'm  
20 highlighting for him where in this article, so he  
21 doesn't have to read the whole thing that I found  
22 the information responsive to his question, which

1 is a statement by somebody in Wall Street Journal,  
2 which is, you know, in some circles considered a  
3 reasonably accurate paper. Stating that it was  
4 not collected in the 2010 census.

5 Q Okay. And take a look -- let's do that  
6 again. We had some interference from the  
7 conference line.

8 Take a look at the second page of  
9 Comstock Exhibit 2. This is the page marked 2522.

10 A Yep.

11 Q And, again, about two-thirds of the way  
12 down the page, there's another highlighted line.

13 Do you see that?

14 A I -- yep.

15 Q I'll represent to you this line was  
16 highlighted as the documents were produced to the  
17 plaintiffs in this lawsuits. We did not  
18 highlight.

19 A Okay.

20 Q That line reads --

21 A I can't read what it says.

22 Q -- "Many more foreign-born residents were

1 counted in 2000 than was expected based on annual  
2 estimates produced by the Bureau."

3 Do you see that line?

4 A Yep. I'm -- I see the highlighted line,  
5 but I'm taking it at your word that that's what it  
6 says.

7 Q Okay. The -- do you know why you  
8 highlighted that line when you sent this blog post  
9 to the Secretary?

10 A Again, it would appear to indicate that  
11 the census may have underestimated the number of  
12 undocumented folks.

13 Q Okay. So you told me that the Secretary  
14 first raised the idea of adding a citizenship  
15 question to the census shortly after he was  
16 confirmed. You've testified that on March 10th,  
17 you emailed him information showing that  
18 undocumented residents are included in the  
19 apportionment counts. You've testified on  
20 March 10th, you emailed him a blog post from the  
21 Wall Street Journal highlighting a line that no  
22 major government survey asks American's about

1 their citizenship status.

2 Does that help you remember when the  
3 Secretary first expressed interest in adding a  
4 citizenship question to the decennial census?

5 A No.

6 Q And does that help you remember that it  
7 was no later than March 10th that the Secretary  
8 first asked you that question?

9 A Again, you're speculating as to when he  
10 asked. But he appeared to have inquired about  
11 some relevant aspects of it --

12 Q Okay.

13 A -- on March 10th.

14 Q We'll mark this Comstock Exhibit 3. And,  
15 Mr. Comstock, is being handed Document Bates stamp  
16 3685.

17 (Plaintiffs' Exhibit 3, Email, was  
18 marked.)

19 BY MR. COLANGELO:

20 Q Mr. Comstock, do you have Exhibit 3 in  
21 front of you?

22 A I do.

1 is David Langdon asking you what your schedule --

2 A Right.

3 Q -- looks like to receive a briefing on  
4 the 2020 census --

5 A Right.

6 Q -- and ACS topics; is that right?

7 A Correct.

8 Q So is it your understanding that he was  
9 briefing the acting deputy secretary or that he  
10 was arranging everything for you?

11 A Again, I have no recollection of this  
12 exchange. So it's entirely possible that this  
13 briefing in the 3/10 email and briefing in the  
14 3/15 email are one in the same or they could be  
15 different. I don't know.

16 Q Okay. Let's mark this Comstock 5. This  
17 is document Bates -- the witness has been handed  
18 Comstock Exhibit 5 stamped 1321.

19 (Plaintiffs' Exhibit 5, Memo, was  
20 marked.)

21 BY MR. COLANGELO:

22 Q Mr. Comstock, do you have Exhibit 5 in

1 front of you?

2 A I do.

3 Q Have you seen this document before?

4 A I have.

5 Q When's the first time you saw this

6 document?

7 A Probably when we reviewed a draft in the

8 Justice Department.

9 Q Okay. When was that?

10 A I couldn't tell you the date.

11 Q Was it near in time to the date below

12 Secretary Ross's signature, which is June 21,

13 2018?

14 A I'd say that's likely, yes.

15 Q When's the last time you saw this

16 document?

17 A Right now.

18 Q When's the last time before right now

19 that you saw this document?

20 A I think maybe yesterday. I can't recall.

21 Q Okay. Did you draft this memo?

22 A I did not draft this memo, no.

1 Q Did you assist in drafting this memo?

2 A I provided some edits to this memo.

3 Q Okay. Who else assisted in providing  
4 edits to the memo?

5 A The Office of General Counsel.

6 Q Who in the Office of General Counsel?

7 A I believe Mike Walsh.

8 Q Anyone else?

9 A There may have been other counsel. I  
10 don't know.

11 Q Did Peter Davidson provide edits to this  
12 memo?

13 A It's entirely possible he did.

14 Q Did James Uthmeier provide edits to this  
15 memo?

16 A It's possible, yes.

17 Q The second sentence of this memo says,  
18 "Soon after my appointment as Secretary of  
19 Commerce, I began considering various fundamental  
20 issues regarding the upcoming 2020 census,  
21 including funding and content. Part of these  
22 considerations included whether to reinstate a



1 citizenship question, which other senior  
2 administration officials had previously raised."

3 A Yes.

4 Q Do you see that?

5 A I do.

6 Q Do you recall when -- strike that.

7 Do you know what time period the  
8 Secretary is referring to in this memo when he  
9 says, "Soon after my appointment, I began  
10 considering various fundamental issues"?

11 A Well, it appears that he would be talking  
12 about spring of 2017.

13 Q And the Secretary says in this memo, "My  
14 staff and I thought reinstating a citizenship  
15 question could be warranted."

16 Do you see that line?

17 A Yep.

18 Q Okay. Who is the Secretary referring to  
19 when he says my staff and I?

20 A That probably includes me and could  
21 include other staff.

22 Q Which other staff?

1           A    Other staff involved in this process  
2    would include James Uthmeier, Mike Walsh,  
3    Wendy Teramoto, the Census staff.   You know,  
4    again, the entire department that works for him,  
5    so --

6           Q    Okay.   He refers in that line to, "My  
7    staff and I thought reinstating a citizenship  
8    question could be warranted."

9                   Is that right?

10          A    Right.   So he's likely talking about me.  
11   And, again, whether he discussed this with  
12   Eric Branstad, I have no idea.   Izzy Hernandez was  
13   working on this for a while, so he might have  
14   talked to him about it.   And then, obviously,  
15   James Uthmeier was working on this.   Ellen Herbst,  
16   whether he discussed it with her, I don't know.

17          Q    Let me ask you another question about  
18   your review of this memo.   You mentioned that  
19   before today, the last time you saw it was  
20   yesterday; is that right?

21          A    Right.   Counsel showed it to me.

22          Q    And who was present at that meeting?

1 Q And who did you discuss it with when you  
2 were shown this -- the draft of this memo before  
3 June 21st?

4 A I would have discussed it with counsel.

5 Q The same counsel you just identified?

6 A No. Because I wasn't working with the  
7 Justice Department folks at the time. So this  
8 would have been internal at Commerce.

9 Q Okay. I thought you said it came over  
10 from the Justice Department.

11 A It did, the first draft.

12 Q Okay. What do you mean by I wasn't  
13 working with Justice Department folks at the time?

14 A I was not involved with direct  
15 interaction with the Justice Department --

16 Q Okay.

17 A -- I was seeing them through the Office  
18 of General Counsel.

19 Q So you discussed with your colleagues in  
20 OGC?

21 A Correct.

22 Q The same colleagues who are here today?

1           A     Michael Walsh, I know I did. I don't  
2 recall if I discussed with David or not.

3           Q     Anyone else?

4           A     I likely talked to James Uthmeier.

5           Q     Anyone else outside --

6           A     Peter Davidson.

7           Q     I'm sorry. Please answer.

8           A     No. Peter Davidson. But those would  
9 have been the likely candidates. Again, I don't  
10 recall the exact discussions.

11          Q     This was two months ago, correct?

12          A     Correct.

13          Q     Did you discuss the draft of this memo  
14 with anybody outside the Office of the General  
15 Counsel at Commerce?

16          A     Other than when the Secretary signed it,  
17 no.

18          Q     Okay. Tell me who you discussed it with  
19 when the Secretary signed it?

20          A     The Secretary.

21          Q     And what did you discuss with him when he  
22 signed it?

1           A    Mr. Secretary, the Justice Department  
2 recommends that we file this supplemental memo,  
3 and so we recommend you sign it.

4           Q    And did he read it when you showed it to  
5 him?

6           A    I believe he did, yes.

7           Q    Had you shown it to him before that  
8 conversation?

9           A    I -- I don't know.

10          Q    Do you know if OGC had shown it to him  
11 before that conversation?

12          A    It's entirely possible, yes.

13          Q    Do you know if the Justice Department  
14 showed it to him before that conversation?

15          A    I don't believe the Justice Department  
16 came over to meet with them.

17          Q    Did you talk with anyone other than the  
18 Secretary or your colleagues from the Office of  
19 General Counsel about this memo before June 21st?

20          A    Not that I recall.

21          Q    Did you discuss with it  
22 Karen Dunn Kelley?

1           A    That's entirely possible, yeah.

2           Q    Okay.  Anyone else?

3           A    Again, don't recall specific meetings on  
4   this.  I think it was done largely in back and  
5   forth as people were available.

6           Q    Did you discuss it with Wendy Teramoto?

7           A    No.  I don't believe I discussed it with  
8   Wendy.

9           Q    Wendy is the chief of staff?

10          A    Yes.

11          Q    And you report to her?

12          A    Yes.

13          Q    Do you know why you wouldn't have  
14   discussed it with Wendy?

15          A    Wendy doesn't get very involved in the  
16   policy matters, typically.

17          Q    Why not?

18          A    Because she's chief of staff.  That's her  
19   call.

20          Q    Got it.

21                You mentioned that you were likely one of  
22   the people the Secretary's referring to when he

1 says my staff and I thought reinstating a  
2 citizenship question could be warranted.

3 A Uh-huh!

4 Q Why did you think in the spring of 2017  
5 that reinstating a citizenship question could be  
6 warranted?

7 A Because a citizenship question had  
8 previously been asked. It's asked by every other  
9 major democracy in the world, so why wouldn't we  
10 ask?

11 Q And why did you want a citizenship  
12 question?

13 A Again, I think it provides important  
14 information that's used for all kind of programs.  
15 And if you want a complete and accurate census,  
16 you would provide it.

17 Q What caused you to form a view on whether  
18 the citizenship question should or should not be  
19 added?

20 A When I was -- and I didn't really know  
21 that it wasn't included in the census, but once I  
22 became informed of that, it struck me as odd that

1 we don't ask the question.

2 Q And you testified earlier that the  
3 Secretary is the first person who raised it to  
4 you?

5 A In my employment at the Department of  
6 Commerce, yes.

7 Q Do you recall discussing it before you  
8 worked at the Commerce Department?

9 A Probably sometime in the last 30-odd  
10 years, I'm in -- you know, in political science  
11 and politics, so I'm sure I discussed at.

12 Q But the first time in 2017 that you  
13 recall considering this issue is when the  
14 Secretary raised it with you?

15 A Correct.

16 Q And this memo says the Secretary began  
17 considering it soon after his appointment?

18 A Correct.

19 Q And his appointment was February 28th  
20 we've established --

21 A That's correct.

22 Q -- of 2017?



1 Census Bureau's processes for changing statistical  
2 instruments when you formed a view that the  
3 citizenship question should be added?

4 MR. GARDNER: Objection. Form.

5 BY MR. COLANGELO:

6 Q You can answer.

7 A Okay. Well, again, I think you need to  
8 separate this out. My decision or my belief that  
9 a -- a citizenship question should be included  
10 does not in any way change the process by which it  
11 might get included. So they're two separate  
12 things. I can hold the belief that a certain  
13 action might be warranted or should be taken  
14 independent of any analysis of whether or not that  
15 should be done. That's two separate things. So I  
16 think you're conflating the two.

17 The fact that I may think that as an  
18 objective, hypothetical question should one be  
19 added, I can form that belief quite quickly and  
20 hold that. That's, then, separate from is that  
21 the right decision to make for a variety of  
22 reasons, including some of the issues that you

1 just outlined.

2 Q And so in forming your view that a  
3 citizenship question should be added --

4 A Again, you're characterizing it in a way  
5 that I'm not. In forming my view that a  
6 citizenship question would be appropriate to  
7 include in a census, that's one thing.

8 Q Okay.

9 A Should be added is a separate --

10 Q Hang on a second. I haven't added a  
11 question yet.

12 The Secretary's memo says my staff and I  
13 thought reinstating a citizenship question could  
14 be warranted, right? And you've testified that  
15 you were among the people he was referring to when  
16 he says my staff and I.

17 A Right.

18 Q So you were of the view that the  
19 citizenship -- adding a citizenship question could  
20 be warranted?

21 A Yes.

22 Q And I'm asking in forming the view that

1 adding a citizenship question could be warranted,  
2 you relied only on common sense; is that what you  
3 testified?

4 MR. GARDNER: Objection.

5 Mischaracterizes the witness's prior testimony.

6 BY MR. COLANGELO:

7 Q What did you rely on in forming that  
8 view?

9 A So, again, the key word is could. Could  
10 be warranted, meaning it is worthy of  
11 investigating further. That is what the document  
12 says.

13 Q What did you rely on in forming that  
14 view?

15 A The fact that other countries ask this  
16 information; the fact that we ask it on the ACS of  
17 a percentage of the population every year; the  
18 fact that as a citizen, most people wouldn't be  
19 concerned with answering that question. All of  
20 those things are relevant.

21 Q Did you research the statistical  
22 practices of other countries in the spring of

1 2017?

2 A No.

3 Q When did you -- did there come a time  
4 when you researched the statistical practices of  
5 other countries?

6 A Why would that be relevant?

7 Q Mr. Comstock, you just testified that in  
8 forming the view that adding a citizenship  
9 question could be warranted, among the things you  
10 considered was that other countries do. So I'm  
11 asking you --

12 A Okay.

13 Q -- did you research the practices of  
14 other countries?

15 A By that, you mean did I -- did I  
16 determine that other countries ask the question?  
17 Yes.

18 Q In the spring of 2017?

19 A Yeah. I think we did a quick Google  
20 search, you know.

21 Q So you Googled the census practices of  
22 other countries in order to determine that adding

1 a citizenship question could be warranted?

2 A Again, my formulation of a -- of a  
3 decision that it could be warranted is largely  
4 based on common sense.

5 Q Okay. I just want to make sure that I  
6 understand. That as to the part of your answer  
7 that related to the practices of other countries,  
8 in the spring of 2017, you formed that view by  
9 Googling it?

10 A I may have asked if other countries did  
11 it or I may have gotten online and looked. I  
12 don't recall.

13 Q Who would you have asked if you asked?

14 A I likely would have asked somebody from  
15 Census or I might have asked David Langdon.

16 Q And if you asked, would that be reflected  
17 in your -- in your email or your memo somewhere?

18 A If it was, you could have found the  
19 email. So I, obviously, did not send an email if  
20 I asked that question.

21 Q Okay. The --

22 MR. GARDNER: Matt, I'm sorry. I didn't

1 Q Who are those other senior administration  
2 officials?

3 A You'd have to ask the Secretary.

4 Q You don't know yourself?

5 A I don't.

6 Q You have no idea which other senior  
7 administration officials raised this question,  
8 other than the Secretary?

9 A No.

10 Q You never asked him where the idea came  
11 from?

12 A Nope.

13 Q He never told you where the idea came  
14 from?

15 A Nope.

16 Q You spent a lot of time on this issue?

17 A Not relative to a lot of other things I  
18 work on, no.

19 Q How would you characterize the amount of  
20 time you spent on this issue?

21 A One one-hundredth of my time.

22 Q You agree that it's an important issue?

1 A Correct.

2 Q It was important to the Secretary?

3 A Correct.

4 Q He was motivated to get this done?

5 A He was working on a lot of different  
6 issues at the time.

7 Q But this one was important to him?

8 A Yes. Absolutely.

9 Q Okay. And when you saw the draft of this  
10 memo before June 21st and it refers to other  
11 senior administration officials, you didn't  
12 yourself have any view or understanding of who  
13 those other administration officials were?

14 A I did not, no.

15 Q You didn't ask the secretary who those  
16 other administration officials were?

17 A No.

18 Q Okay. When recommending that he sign the  
19 memo, he didn't say to you who are the other  
20 senior -- who the other senior administration  
21 officials were?

22 A We did not discuss that, no.

1 Q And you said this came over from the  
2 Justice Department?

3 A Correct.

4 Q Who sent it over, do you remember?

5 A I don't know.

6 Q Let's mark Exhibit 6.

7 (Plaintiffs' Exhibit 6, Email, was  
8 marked.)

9 MR. COLANGELO: The witness has been  
10 handed document stamped 2561. This has been  
11 marked Exhibit 6.

12 BY MR. COLANGELO:

13 Q Do you have Exhibit 6 in front of you?

14 A I do.

15 Q Have you seen this email before?

16 A I'm not on the email, so, no.

17 Q So this is the first time you've seen  
18 this message?

19 A Yeah. I -- I don't recall seeing this  
20 when it was sent.

21 Q Is today the first time you've seen this  
22 email?



1 talk to.

2 Q Did the Secretary speak with Mr. Bannon  
3 that night?

4 A I don't know.

5 MR. GARDNER: Objection. Calls for  
6 speculation. Lack of foundation.

7 THE WITNESS: I do not know.

8 BY MR. COLANGELO:

9 Q Did the Secretary speak with Kris Kobach  
10 on April 7, 2017?

11 A No idea.

12 Q Did you join a call with the Secretary  
13 regarding the census on April 5th of 2017?

14 A I have no idea.

15 Q You don't know if you joined the call  
16 with the Secretary on April 5th of 2017?

17 A I don't know what I was doing on  
18 April 5, 2017 without looking at a calendar or  
19 something else that would remind me. I'd have to  
20 go through my emails that day. I could not tell  
21 you what I was doing on that day.

22 Q Do you know who Kris Kobach is?

1           A    I believe he's somebody with State of  
2   Kansas maybe.

3           Q    And have you spoken to Mr. Kobach before?

4           A    I've never spoken to Mr. Kobach.

5           Q    Have you emailed with Mr. Kobach?

6           A    I've never emailed with Mr. Kobach.

7           Q    And after the call that's referred to in  
8   this email, did the Secretary tell you what he  
9   discussed?

10          A    No.

11               MR. GARDNER:  Objection.  Lack of  
12   foundation.

13               THE WITNESS:  No.

14   BY MR. COLANGELO:

15          Q    Who would know what was discussed on this  
16   phone call?

17               MR. GARDNER:  Objection.  Calls for  
18   speculation.  Also, lack of foundation.

19   BY MR. COLANGELO:

20          Q    You can answer.

21          A    The parties to the call.

22          Q    You were working on the census in the

1 spring of 2017, correct?

2 A Yes.

3 Q And the Secretary frequently asked you  
4 for updates on the census-related matters in the  
5 spring of 2017, right?

6 A I wouldn't characterize it as frequently.

7 Q Did the Secretary ever ask you for  
8 updates on census matters in the spring of 2017?

9 A Yes, he did.

10 Q Did he ever update you on developments  
11 that he was aware of regarding the census in the  
12 spring of 2017?

13 A It's unusual for the Secretary to update  
14 me on anything.

15 Q Would the Secretary have told you if he  
16 had a conversation with Steven Bannon about the  
17 census?

18 A Not necessarily.

19 Q Would he have told you if he had a  
20 conversation about the census with Kris Kobach?

21 A Not necessarily.

22 Q Why not?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I wouldn't speculate, but  
3 he's the Secretary. He makes his own decisions.

4 BY MR. COLANGELO:

5 Q So has the Secretary ever told you about  
6 a conversation he had with someone else?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: Yes. He reports to me  
9 sometimes if he feels that it's essential that I  
10 know the substance of conversation.

11 BY MR. COLANGELO:

12 Q Okay.

13 MR. COLANGELO: Can we mark this  
14 Exhibit 7?

15 (Plaintiffs' Exhibit 7, Email, was  
16 marked.)

17 THE WITNESS: Thank you very much.

18 BY MR. COLANGELO:

19 Q Handed the witness a document stamped 763  
20 and marked Exhibit 7.

21 Mr. Comstock, do you have Exhibit 7 in  
22 front of you?

1 A I do.

2 Q Have you seen this email before?

3 A No, I haven't.

4 Q This is the first you've ever seen this  
5 email?

6 A Yes.

7 Q Okay. If you turn to the second page --

8 A I'm sorry. I'm just reading the  
9 document.

10 Okay.

11 Q Do you see at the bottom of page -- of  
12 the first page of this exhibit, Mr. Comstock,  
13 there's an email from Kris Kobach to  
14 Wendy Teramoto --

15 A Right.

16 Q -- on July 21, 2017; is that right?

17 A That's what it says.

18 Q And the email says, "Wendy, nice meeting  
19 you on the phone this afternoon. Below is the  
20 email that I sent to Secretary Ross. He and I had  
21 spoken briefly on the phone about this issue at  
22 the direction of Steven Bannon a few months

1 earlier."

2 Do you see that?

3 A I see that.

4 Q Okay. That was the call on April 5th  
5 that we were just talking about, right?

6 MR. GARDNER: Objection. Lack of  
7 foundation. Calls for speculation.

8 THE WITNESS: Doesn't specify when the  
9 phone call took place.

10 BY MR. COLANGELO:

11 Q And did Wendy tell you she got this email  
12 from Kris Kobach in July of 2017?

13 A No.

14 Q You've never spoken to Wendy about  
15 Kris Kobach, at all?

16 A Not that I recall.

17 Q Is there anyone else that you're aware of  
18 that Steven Bannon directed the Secretary to talk  
19 to about the census, other than Kris Kobach?

20 MR. GARDNER: Objection. Lack of  
21 foundation.

22 THE WITNESS: I have no knowledge of any

1 conversations with Steven Bannon, so I wouldn't  
2 know who he might have suggested the Secretary  
3 talk to.

4 BY MR. COLANGELO:

5 Q Have you ever spoken to Steven Bannon  
6 yourself?

7 A I have never spoken to Steven Bannon  
8 myself.

9 MR. COLANGELO: Can we have this marked  
10 Exhibit 8?

11 (Plaintiffs' Exhibit 8, Email, was  
12 marked.)

13 BY MR. COLANGELO:

14 Q This is document stamped 3709.

15 A Uh-huh.

16 Q Do you have Exhibit 8 in front of you?

17 A Uh-huh.

18 Q Who's Mark Neuman?

19 A Mark Neuman is a former -- I think he was  
20 formally chair of a census advisory committee, and  
21 he was a member of the transition -- I don't know  
22 which aspect of transition but, basically,

1 THE WITNESS: Again, if we were  
2 considering changing the questions, it would be  
3 important to know.

4 BY MR. COLANGELO:

5 Q And if you're considering adding a  
6 citizenship question, it would also be important  
7 to know the response rates on all demographic  
8 questions; is that right?

9 A That would be one of the questions you  
10 would ask, yes.

11 Q Okay. Did the Secretary discuss the  
12 citizenship question with Mr. Newman in the spring  
13 of 2017?

14 A You'd have to ask the Secretary.

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 BY MR. COLANGELO:

18 Q I'm sorry. You were both speaking at the  
19 same time.

20 MR. GARDNER: Objection. Lack of  
21 foundation.

22 BY MR. COLANGELO:



1 Q And now please answer.

2 A I would say you'd have to ask the  
3 Secretary.

4 Q Did he ever tell you that he spoke with  
5 Mr. Newman about the citizenship question?

6 A I'm fairly certain he was -- he did talk  
7 to him at some point.

8 Q Okay. When was that?

9 A I couldn't tell you.

10 Q Did Mr. Newman ever say to you that he  
11 had spoken to the Secretary about adding a  
12 citizenship question?

13 A It's possible, yeah.

14 Q Okay. When did he tell you?

15 A Again, I don't recall the exact date.

16 Q Try to place it, roughly.

17 A To your question, was there discussion of  
18 the possibility of adding a citizenship question  
19 in the spring? Yes. That does not mean any firm  
20 decision had been made. We were exploring the  
21 opportunity.

22 Q I'm not asking you about decisions. I'm

1 information, so, clearly, at some point, it was  
2 asked. I cannot tell you.

3 Q Can you tell me what you mean by decision  
4 memo?

5 A The memo that the Secretary produced  
6 documenting his decision. There was a reference  
7 to other response rates and demographic. So,  
8 clearly, at some point, the information became  
9 available.

10 Q And you're referring to the  
11 March 26, 2018 from the Secretary to Karen  
12 Dunn Kelley?

13 A Yes.

14 Q But you don't recall seeing that  
15 information -- strike that.

16 MR. COLANGELO: Let's mark Exhibit 9.

17 (Plaintiffs' Exhibit 9, Email, was  
18 marked.)

19 BY MR. COLANGELO:

20 Q We have marked a document stamped 3694 as  
21 Exhibit 9. Do you have this email in front of  
22 you?

1 A I do.

2 Q Have you seen this email before?

3 A Yes.

4 Q Before today, when is the last time you  
5 saw this email?

6 A Yesterday.

7 Q And this is an email from  
8 Brooke Alexander to you with a copy to  
9 Wendy Teramoto; is that right?

10 A Correct.

11 Q Dated April 20, 2017?

12 A Yep.

13 Q And did you understand this to be a  
14 message from the Secretary?

15 A That's what Brooke's message says.

16 Q Brooke has access to the Secretary's  
17 email?

18 A Yes.

19 Q And is it -- okay. Withdrawn.

20 Are you familiar with the National  
21 Advisory Committee on Racial, Ethnic and Other  
22 Populations?

1           A    No.

2           Q    You have no idea what the National  
3   Advisory Committee is?

4           A    I mean, I know it's an advisory committee  
5   to Census, but outside of that, I -- I couldn't  
6   tell you what they do, other than what their title  
7   suggests that they do.

8           Q    So you're aware that there's a National  
9   Advisory Committee on Racial, Ethnic and Other  
10   Populations that advises the Census Bureau?

11          A    I take that from this email that's  
12   correct, yes.

13          Q    And what do you understand the role of  
14   the advisory committee to be?

15          A    To provide advice to the Census Bureau.

16          Q    Okay.   The message from Brooke speaking  
17   for the Secretary to you says, "Earl, Census  
18   director has on April 29th a meeting of the  
19   National Advisory Committee.   We must get our  
20   issue resolved before this" -- exclamation point,  
21   and the must is underlined.

22               Do you see that?

1 A I see that.

2 Q What is our issue?

3 A I couldn't tell you.

4 Q Our issue is the citizenship question,  
5 right?

6 MR. GARDNER: Objection. Calls for  
7 speculation. Lack of foundation.

8 THE WITNESS: I would say likely not,  
9 actually, given there's no reason to believe the  
10 National Advisory Committee on Racial, Ethnic and  
11 Other Populations would be advising on a  
12 citizenship question.

13 BY MR. COLANGELO:

14 Q Were there other issues that you'd been  
15 talking about with the Secretary involving the  
16 census in the spring of 2017 that would relate to  
17 the National Advisory's mandate?

18 A Certainly the SOGI question would, and  
19 the MENA question would.

20 Q But the notification date for the SOGI  
21 question was at the end of March in 2017 -- for  
22 the SOGI topics, I should say, correct?

1 A Correct.

2 Q So that was already resolved by April,  
3 right?

4 A I'm not certain of the timing, but MENA,  
5 I think, was not resolved until sometime in the  
6 spring or summer.

7 Q And sticking with the SOGI question --  
8 and for the record, that' S-O-G-I. SOGI stands  
9 for sex orientation and gender identity.

10 A Correct.

11 Q Would you conclude if the Secretary  
12 referred to a National Advisory Committee on  
13 Racial and Ethnic, Populations that the SOGI  
14 question would be what he had in mind?

15 A I would guess. Again, this is  
16 speculation, but my best guess, based on this  
17 reference, is probably more like the MENA issue is  
18 what was in front of us.

19 Q Okay. And describe the MENA issue?

20 A The Middle Eastern North African  
21 question. There's a question as to whether you  
22 ask two questions or you ask one question. And

1 it's not a topic I spent a tremendous amount of  
2 time on, but it was something that the Census was  
3 very much discussing at the time.

4 Q And had you discussed that issue with the  
5 Secretary?

6 A We had a conversation or two about it.  
7 And, again, it was largely in the context of which  
8 way to go on that question.

9 Q And why would the Secretary have said  
10 that that issue must be resolved by April 29th?

11 MR. GARDNER: Objection. Calls for  
12 speculation. Lack of foundation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A You know, again, at that point -- this is  
16 shortly before a -- if I recall correctly, a  
17 Congressional hearing that was going to go into  
18 the census and probably wanted to have a position  
19 to recommend to Director Thompson as to what he  
20 should say to the advisory group. Again, I don't  
21 recall this reference or precisely what he was  
22 speaking to.

1 Q Okay. This isn't a topic you'd spent a  
2 lot of time on, right, the Middle Eastern  
3 North African question?

4 A Correct.

5 Q There's no reason the Secretary would  
6 have referred to it as our issue, is there?

7 MR. GARDNER: Objection. Calls for  
8 speculation. Lack of foundation.

9 THE WITNESS: Again, depending on if his  
10 perception was that there was an administration  
11 policy call to make on it, he would refer to it as  
12 our issue.

13 BY MR. COLANGELO:

14 Q He could also have referred to the  
15 citizenship issue as your issue, right?

16 MR. GARDNER: Objection. Calls for  
17 speculation. Lack of foundation.

18 THE WITNESS: Again, I would say looking  
19 at the context of the email, I would say that's an  
20 unlikely connection.

21 BY MR. COLANGELO:

22 Q And by April 20th of 2017, how many times



1 had you discussed the citizenship question with  
2 Secretary Ross?

3 A I have no idea.

4 Q More than a handful?

5 A Possibly.

6 Q Okay. Would you say he was extremely  
7 interested in the issue?

8 A Certainly, when he raised it, he was  
9 interested in it.

10 Q Okay. You wouldn't say he was extremely  
11 interested in the MENA question, right?

12 A When we discussed it, he was equally  
13 interested in that.

14 Q He didn't raise it with you with the same  
15 frequency he raised the citizenship question,  
16 right?

17 A That's correct.

18 Q Why was Wendy Teramoto copied on this  
19 email?

20 MR. GARDNER: Objection. Calls for  
21 speculation.

22 THE WITNESS: Couldn't tell you.

1 BY MR. COLANGELO:

2 Q Did you speak with her about this issue  
3 after you got this message?

4 A It's possible. I don't recall.

5 MR. COLANGELO: Can we mark this  
6 Exhibit 10?

7 (Plaintiffs' Exhibit 10, Email, was  
8 marked.)

9 BY MR. COLANGELO:

10 Q Handed the witness a document stamped  
11 3710 and we've marked it as Exhibit 10.

12 A Okay.

13 Q Have you read this email?

14 A Yep.

15 Q Okay. You've seen this email before?

16 A I have.

17 Q When's the last time you saw this email?

18 A Yesterday.

19 Q When you saw this email yesterday, was it  
20 redacted as it is in the form I've shown it to you  
21 now or was it unredacted?

22 A It was redacted.

1 Q Okay. And you see that the Secretary has  
2 written you an email on May 2, 2017 that says,  
3 quote, worst of all, they emphasize they have  
4 settled with Congress on the questions to be  
5 asked. I am mystified why nothing has been done  
6 in response to my months' old request that we  
7 include the citizenship question. Why not?

8 Do you see that?

9 A I see that.

10 Q When did the Secretary make his months'  
11 old request to include the citizenship question?

12 A Again, sometime in the spring.

13 Q Probably on March 10th when you emailed  
14 him the Wall Street Journal blog post?

15 A Potentially. I don't recall.

16 Q Who does the "they" refer to in the line  
17 I just read you from the Secretary's email?

18 MR. GARDNER: Objection. Calls for  
19 speculation.

20 THE WITNESS: I don't know.

21 BY MR. COLANGELO:

22 Q You mentioned a minute ago the Census

1 director in the -- this time period, had an  
2 upcoming House appropriation hearing; is that  
3 right?

4 A I believe I said the Secretary had an  
5 upcoming House appropriation hearing.

6 Q Do you remember the date of that hearing?

7 A I don't.

8 MR. COLANGELO: Can we mark this Exhibit  
9 Number 11?

10 (Plaintiffs' Exhibit 11, Email, was  
11 marked.)

12 BY MR. COLANGELO:

13 Q Okay. This is -- have you had a chance  
14 to look at this email?

15 A Lot of black spots on it. Okay.

16 Q Have you seen this email before?

17 A Apparently I must have seen it when I  
18 wrote it.

19 Q When's the last time before today you saw  
20 this email?

21 A Probably May 1, 2017.

22 Q Okay. And does this email reflect that

1 you sent the Secretary, Director Thompson's House  
2 appropriation subcommittee written testimony?

3 A Yes.

4 Q And his testimony was for, quote, this  
5 Wednesday?

6 A Right. That's what it appears.

7 Q And if I told you that -- oh, if you look  
8 at the subject line it says, Wednesday, May 3rd;  
9 is that right?

10 A That's correct.

11 Q Okay. So let's refer back to Exhibit 10.

12 A Yep.

13 Q Now that you see the day before you had  
14 sent the Secretary Mr. Thompson's written  
15 testimony for the House appropriation subcommittee  
16 hearing --

17 A Right.

18 Q -- what do you understand, worst of all  
19 they emphasize they have settled with Congress to  
20 mean?

21 MR. GARDNER: Same objection. Calls for  
22 speculation.

1 THE WITNESS: Again, I'm not sure without  
2 further context who they is. He could be  
3 referring to that advisory committee that you had  
4 had in a previous email. He could be referring to  
5 Census.

6 BY MR. COLANGELO:

7 Q Does the advisory committee establish the  
8 content for the census?

9 A Again, the context of this email is that  
10 somebody appears to be emphasizing that they've  
11 settled with Congress on the questions. That  
12 clearly is not the case, because questions aren't  
13 due until March of 2018. So they couldn't have  
14 settled on the questions.

15 Q And you see that at the top of  
16 Exhibit 10, you email the Secretary saying, "On  
17 the citizenship question, we will get that in  
18 place"?

19 A Uh-huh.

20 Q Do you see that?

21 A Yep.

22 Q What did you mean by that?

1           A   Well, it means that we're, as instructed,  
2 going to continue to work on developing a  
3 citizenship question, and that process -- again,  
4 it's probably helpful at this point to explain on  
5 the policy side, right, you formulate -- you  
6 formulate something that you think you would like  
7 to do, and then you go explore that. That's my  
8 job, is to go. Secretary says, I think this might  
9 be a good idea, you run it down, and you track  
10 down the issues, and you say -- you know, first  
11 question I usually ask is, okay, is this something  
12 that Department of Commerce does? Do we have  
13 legal authority to do this? Once you clear those  
14 two thresholds, now you get to work.

15               But I don't spend a lot of time chasing  
16 down things that people are not planning on doing.

17           Q   So you --

18           A   So there has to be some initial threshold  
19 decision that this is worth pursuing.

20           Q   Now, let me stop you there, because you  
21 said a minute ago, as instructed. And you're  
22 referring to instructions from the Secretary,

1 correct?

2 A To pursue, exploring the question.

3 Q This was instructions to add the question  
4 in response to my months' old request that we  
5 include the citizenship question, correct?

6 A This would be instructions to review and  
7 consider and present to him information that would  
8 allow him to make a decision on whether or not to  
9 take final action.

10 Q Mr. Comstock, I'm just asking you what  
11 you understood on May 2nd --

12 A And that's what I'm telling you I  
13 understood on May 2nd.

14 Q Hold on one second. Let me finish the  
15 question.

16 A Uh-huh.

17 Q The Secretary wrote, "I am mystified why  
18 nothing has been done in response to my months'  
19 old request that we include the citizenship  
20 question."

21 And you responded, "On the citizenship  
22 question, we will get that in place"?



1 A Correct.

2 Q Okay. So my question is: By we will get  
3 that in place, what did you mean?

4 A I meant that I will present to you the  
5 information and the process necessary for you to  
6 decide if you would like to pursue this question.

7 Q Your email says we will get that in  
8 place, correct?

9 A I mean, we will get in front of you the  
10 necessary information for you to make a decision.  
11 Part of my role in this process is explaining to  
12 people who have never worked in government before  
13 that there are processes that you have to follow  
14 in order to make an action happen. You're dealing  
15 with people who are used to being able to make a  
16 decision and it simply goes into effect.

17 Q Okay.

18 A That's not the way the U.S. government  
19 works.

20 Q So the process that you then go on to  
21 tell the Secretary he has to follow is later in  
22 your message; is that right?

1           A    That part of the process, yes.

2           Q    And that email says we need to work with  
3   Justice to get them to request that citizenship be  
4   added back as a census question; is that right?

5           A    That's right.

6           Q    Why would you say you needed to work with  
7   the Justice Department to get them to request that  
8   citizenship be added back?

9           A    Because based on a very preliminary  
10   review, they appeared to be the most likely  
11   government body that would have a specific need  
12   for the information that would support adding a  
13   citizenship question to the decennial census.

14          Q    Who conducted that preliminary review?

15          A    We were told by the Census Bureau that  
16   the Justice Department was the person that had  
17   requested the citizenship question on the ACS and  
18   that they utilized the ACS data for Voting Rights  
19   Act information.

20          Q    Who in the Census Bureau told you that?

21          A    I couldn't tell you.

22          Q    And why did you need a request from

1 Justice?

2 A Again, based on the preliminary review,  
3 the understanding we had was questions are added,  
4 based on requests from a government agency. There  
5 is such a thing as the Paperwork Reduction Act  
6 where you have to justify to OMB why do I need  
7 this information? That has to get cleared. So  
8 there are certain hurdles you have to get through.  
9 So if at the end of the day the Secretary decided  
10 to pursue this question, we would need to clear  
11 certain legal thresholds.

12 Q Why not just tell the Census Bureau to  
13 add the citizenship question and say the Secretary  
14 wanted it?

15 A Because I'm not sure that that would be  
16 the process they would necessarily agree to  
17 follow.

18 Q So you had to have it come from DOJ in  
19 order for the Census Bureau to agree to follow it?

20 A Again, that was a preliminary conclusion  
21 based on a cursory analysis.

22 Q Your email then says, "We have the court

1 cases to illustrate that DOJ has a legitimate need  
2 for the question to be included."

3 What court cases were your referring?

4 A I don't recall the exact court cases.

5 Q Did you research those court cases?

6 A I did research a court case where there  
7 was a scenario in which you would need -- it would  
8 be important to have Citizen Voting Age Population  
9 data in order to make a Voting Rights Act claim.

10 Q How did you identify that case?

11 A By a legal research.

12 Q What do you mean by legal research?

13 A Well, I think I talked to -- I'm trying  
14 to think -- I think Mark Neuman may have provided  
15 a case name. I talked to James Uthmeier, who  
16 looked at some cases. Basically said, okay, if  
17 this is the question -- I mean, it's what you do  
18 as an attorney all day long, is to go find cases  
19 to support what you're looking for.

20 Q So Mark Neuman identified for you a case  
21 that would support DOJ's need for this  
22 information?

1           A    Yeah.   I said I may have spoken to  
2   Mark Neuman on that.   I think he may have provided  
3   it.   I don't recall.   I know James Uthmeier looked  
4   at some cases.

5           Q    Would he have provided that case for you  
6   on a phone call or by email?

7           A    James?

8           Q    Pardon me?

9                I'm sorry.   Withdraw that question.

10            Would Mr. Newman have provided that case  
11   to you by email or on the phone?

12           A    Well, if he provided it by email, you'd  
13   have it.   I don't have the emails in front of me,  
14   so I can't tell you.

15           Q    So by May of 2017, you'd come to the view  
16   that you needed another agency to request a  
17   citizenship question on the census?

18           A    That was based on the preliminary  
19   analysis, yes.

20           Q    You then say in your email, "I will  
21   arrange a meeting with DOJ staff this week to  
22   discuss."

1 Do you see that?

2 A Yes.

3 Q Okay. So before May 2, 2017, you had not  
4 had any discussions with the Department of Justice  
5 about the citizenship question, right?

6 A Not to my knowledge.

7 Q What did you do to arrange a meeting with  
8 DOJ staff to discuss?

9 A I asked Eric Branstad for a name over at  
10 DOJ, and he provided me the name of  
11 Mary -- Mary Jane [sic] Hankey I think it was,  
12 whom I then contacted.

13 Q Okay. Your email refers to the court  
14 cases to illustrate that DOJ has a legitimate need  
15 for the question to be included.

16 A That's what it says, yes.

17 Q What were the other needs that you had  
18 talked about for including the citizenship  
19 question?

20 A I don't recall.

21 Q Okay. And by legitimate need, were you  
22 concerned that other needs that didn't come from

1 DOJ would not be legitimate needs?

2 A No. I think that's just an  
3 imprecise -- the use of the term legitimate,  
4 something to say that it would be a need that  
5 would be considered a government need for the  
6 information.

7 MR. COLANGELO: Counsel, five-minute  
8 break. Let's go off the record.

9 VIDEOGRAPHER: Going off the record. The  
10 time on the video is 11:31 a.m.

11 (Off the record.)

12 VIDEOGRAPHER: This begins Media Unit  
13 Number 3. The time on the video is 11:45 a.m. We  
14 are on the record.

15 BY MR. COLANGELO:

16 Q Okay. Let's mark as Exhibit 11 --

17 MR. GARDNER: No. I think 12.

18 MR. COLANGELO: 12. Sorry. Thank you.

19 (Plaintiffs' Exhibit 12, Email, was  
20 marked.)

21 BY MR. COLANGELO:

22 Q This is document stamped 3699.

1 Q Why would the Secretary's concern about  
2 the citizenship question prompt Wendy to bring up  
3 Mark Neuman?

4 MR. GARDNER: Objection. Lack of  
5 foundation. Calls for speculation.

6 THE WITNESS: Again, he was the primary  
7 transition team person advising us on Census.

8 BY MR. COLANGELO:

9 Q Okay. And the email also says, "Do you  
10 want me to set up another meeting?"

11 Do you see that?

12 A I see that.

13 Q What's the earlier meeting that she's  
14 referring to?

15 MR. GARDNER: Objection. Calls for  
16 speculation.

17 THE WITNESS: I don't know.

18 BY MR. COLANGELO:

19 Q Had you attended the meetings with the  
20 Secretary and Mr. Neuman on the citizenship  
21 question before May 2, 2017?

22 A I don't know. I had attended meetings



1 with the Secretary and Mr. Newman on the census.

2 Q Before May 2017?

3 A Yes.

4 Q How many times?

5 A I don't know. Two times, three times.

6 I'd -- you'd have to check his count.

7 Q Okay. And the citizenship question was  
8 discussed in those earlier meetings?

9 A I don't recall.

10 Q And you see the Secretary writes back and  
11 says, "Let's try to stick him in there for a few  
12 days to fact find."

13 A Yes.

14 Q Do you see that?

15 Were you aware of that request?

16 A I was aware that the Secretary was  
17 distressed with Director Thompson who had just  
18 told us that he had massively overrun the CEDCaP  
19 budget and failed to warn us that that was coming.  
20 So the Secretary was not happy with the Census  
21 leadership at the time and was trying to find  
22 someone who could be -- provide us better

1 May 4th early in the morning.

2 BY MR. COLANGELO:

3 Q Saying, "Thanks, Eric. Earl."

4 Correct?

5 A Yes.

6 Q So on May 2nd, the Secretary asked you  
7 why nothing had been done in response to his  
8 months' old request. You told him you needed to  
9 get the Justice Department to request the  
10 question. You also told him that you would set up  
11 meetings with the Justice Department to discuss.  
12 And then after that, you asked Eric Branstad to  
13 get you a point of contact at the Justice  
14 Department and he did, right?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: That appears to be the  
17 sequence.

18 BY MR. COLANGELO:

19 Q Okay. And you testified earlier that you  
20 hadn't ever spoken to the Justice Department  
21 before that on the citizenship issue?

22 A That's correct.

1 MR. COLANGELO: Let's mark Exhibit 14.

2 (Plaintiffs' Exhibit 14, Email, was  
3 marked.)

4 BY MR. COLANGELO:

5 Q Exhibit 14 is document stamped 2462. You  
6 have Exhibit 14 in front of you?

7 A I do.

8 Q And why were you contacting Mary Blanche?  
9 Her surname is redacted on this email, I assume  
10 for personal privacy reasons. But this is Mary  
11 Blanche Hankey, correct?

12 A Yes.

13 Q Why were you contacting Mary Blanche  
14 Hankey?

15 A That was the name that Eric Branstad said  
16 he'd provide me.

17 Q Okay. And do you know where in the  
18 White House -- strike that.

19 Do you know where in the  
20 Justice Department she worked?

21 A She was advisor for -- to  
22 Attorney General Sessions.

1 Q So she worked for the Attorney General?

2 A Correct.

3 Q And you reached out to her to talk about  
4 the citizenship question, right?

5 A Amongst other things, yes.

6 Q And you reached out to her and asked her  
7 for times for a call that day, right?

8 A That's what I'm asking for, yes.

9 Q Okay. Is that because this was an urgent  
10 priority for the Secretary?

11 A I think you can divine from his prior  
12 email that he was hoping I might take a quick  
13 action on this, so I was trying to be responsive.

14 Q So the answer is yes?

15 A I'm not going to speculate as to whether  
16 he thought it was urgent or not, but he was  
17 conveying he would like me to get moving.

18 Q You were treating it as an urgent matter?

19 A Correct.

20 Q And then you -- did you speak to  
21 Ms. Hankey?

22 A I did speak to Ms. Hankey.

1 Q How many times?

2 A I met with her -- I think I spoke with  
3 her by phone and then met with her in her office.

4 Q When did you speak with her by phone?

5 A I couldn't tell you.

6 Q Was it on May 4th?

7 A It's possible.

8 Q And then you met with her in her office,  
9 you said?

10 A Yes.

11 Q When was that meeting?

12 A I don't know the exact date.

13 Q When you spoke to her on the phone, was  
14 anyone else on the call with you?

15 A No.

16 Q Was anyone else on the call on her end?

17 A Not that I was aware of, no.

18 Q When you met with her in person, did  
19 anyone from the Commerce Department go with you?

20 A No.

21 Q Did anyone from the Census Bureau go with  
22 you?

1 A No.

2 Q Was there anyone else in the meeting that  
3 she brought?

4 A No.

5 Q What did you say to her when you spoke to  
6 her on the phone?

7 A That I'd like to come over and discuss  
8 what issues the Justice Department might have with  
9 Commerce that I could be helpful on and talk to  
10 her about an issue that we were interested in.

11 Q And that issue was the citizenship  
12 question?

13 A Correct.

14 Q And what did she say about that?

15 A Let's get together and meet.

16 Q So then you went over to meet with her.  
17 Did she have any issues that she wanted to raise  
18 with you?

19 A I don't recall that Justice had any  
20 particular Commerce issues, no.

21 Q So this was a meeting about the  
22 citizenship question?

1 A I'd say that was the primary topic.

2 Q Okay. And what did you say to her when  
3 you met with her in person?

4 A That we -- the Secretary had asked us to  
5 look into the possibility of adding a citizenship  
6 question, and that since the Justice Department  
7 was the agency that had sponsored the question for  
8 the ACS, it seemed that that was a logical place  
9 to start, and was there someone in the  
10 Justice Department with whom I should speak about  
11 that.

12 Q And what did she say?

13 A Let me look into it.

14 Q How long was the meeting?

15 A Well, we met for about 20 minutes.

16 Q Did you explain why the Secretary wanted  
17 the citizenship question?

18 A No.

19 Q Did you have an understanding at that  
20 point as to why the Secretary wanted the  
21 citizenship question?

22 A I've never asked the Secretary why he

1) wanted a citizenship question.

2 Q Did she ask you why it was important to  
3 Commerce Department to add a citizenship question?  
4 She being Ms. Hankey.

5 A No.

6 Q You mentioned earlier that you did some  
7 legal research or that Mark Neuman or others may  
8 have identified cases for you. Did you identify  
9 those cases to Ms. Hankey in that conversations?

10 A I don't recall.

11 Q Did you bring any paper with you to that  
12 meeting?

13 A Not that I recall.

14 Q Did you take notes?

15 A No.

16 Q After the meeting, did you update anyone  
17 at the Commerce Department and your discussion?

18 A I don't recall.

19 Q Did you speak to the Secretary to tell  
20 him that -- on an issue that you understand to be  
21 a priority, you'd gone over to the  
22 Justice Department to make some progress on his



1 A Not that I recall.

2 Q And after you met with Ms. Hankey and she  
3 said she'd look into it, what was the next that  
4 you heard from the Justice Department on this  
5 issue?

6 A I think when she contacted me, provided a  
7 name.

8 Q How long after your meeting did she  
9 contact you and provide a name?

10 A There's an email that documents it, you  
11 could tell from that, but otherwise, I have no  
12 idea.

13 Q Okay.

14 A I mean, it was sometime in the next  
15 couple weeks, but --

16 Q And what name did she give you?

17 A I -- I know I put it in a memo to the  
18 Secretary later on, so you'd have to look at that  
19 memo.

20 Q Is it James McHenry?

21 A That sounds like the right name.

22 Q When she spoke to you to pass along

1 James McHenry's name, what did she say about why  
2 she was directing you to him?

3 A She didn't say much. Just said this  
4 would be the best guy to talk to.

5 Q Okay. Had you spoken to James McHenry  
6 before?

7 A Never talked to him before.

8 Q Did she tell you what his position was in  
9 the Department of Justice?

10 A She might have.

11 Q What was his position?

12 A I don't know, actually.

13 Q After she gave you Mr. McHenry's name,  
14 what did you do next to contact him?

15 A I called him on the phone.

16 Q And when you spoke to him on the phone  
17 what did you say?

18 A I outlined that we were interested in  
19 seeing what kind of level of interest the  
20 Justice Department would have in requesting the  
21 citizenship question be asked -- added to the  
22 decennial census.

1 Q And did you tell him why the  
2 Commerce Department wanted the Justice Department  
3 to make that request?

4 A Because that was our understanding of the  
5 process. They were the people that needed it for  
6 ACS, and our understanding was that it might be  
7 useful for them to have it at a more granule  
8 level, which would be needed -- you'd need to put  
9 it on the decennial census to do that.

10 Q So you were -- you told him that the  
11 Commerce Secretary wanted the question and wanted  
12 to know if DOJ would ask for the Census Bureau to  
13 add the question; is that right?

14 A Those are your words.

15 Q Well, I'm asking you to tell me yes or  
16 no.

17 A Well, if the question is yes or no, then  
18 the answer is no.

19 Q Okay. How would you put it in your  
20 words?

21 A In my words, what I told him was that we  
22 were exploring the possibility and wanting to know

1 the level of interest at the Justice Department in  
2 making such a request, would this be information  
3 they could use?

4 Q So this is the shortly -- this is shortly  
5 after the Secretary of Commerce emailed you and  
6 said I am mystified why nothing had been done in  
7 response to my months' old request?

8 A Right.

9 Q But your testimony is that you conveyed  
10 to the Justice Department that you were exploring  
11 the issue?

12 A As I explained before, when -- when the  
13 Secretary says he would like to do something,  
14 there's a presumption that we will attempt to do  
15 that. That's subject to revision as more  
16 information is made available. So I'm exploring  
17 what is necessary to follow through on the  
18 Secretary's request. That request may be modified  
19 or changed, based on the information that I  
20 provide.

21 Q Okay. How many times did you speak to  
22 Mr. McHenry?

1 A I think three or four times.

2 Q And what was the next time you spoke to  
3 him after the initial phone call?

4 A Maybe a week later.

5 Q Okay. And what did he say when he -- did  
6 he call you or did you call him?

7 A I don't recall.

8 Q And what did you discuss on that  
9 conversation?

10 A That he was still exploring the question.

11 Q How long was that conversation?

12 A Five minutes.

13 Q Okay. So he didn't have anything new to  
14 report?

15 A Right.

16 Q Okay. And you said you spoke to him at  
17 least a couple more times; is that right?

18 A Again, I don't recall the exact number of  
19 times, but somewhere in the vicinity of three or  
20 four times.

21 Q So after the second call where he said he  
22 was still exploring it, tell me about the next

1 conversation?

2 A Memory serves, I think the next  
3 conversation was a similar one. He was still  
4 looking into the matter and then -- and then the  
5 last conversation he and I had, he directed me to  
6 somebody at the Department of Homeland Security.

7 Q Okay. And over what period of time were  
8 you talking to Mr. McHenry on the phone?

9 A Probably over the course of a month.

10 Q So this was primarily in May of 2017?

11 A I honestly don't recall, but sometime in  
12 May, early June.

13 Q And who did he direct you to at the  
14 Department of Homeland Security?

15 A I don't remember the person's name.

16 Q Was it Gene Hamilton?

17 A Again, I know I prepared a memo for the  
18 Secretary that had the name. So if that's the  
19 name that was on the memo, then, yes, that would  
20 be the person I spoke with.

21 Q How many times did you speak to your  
22 point of contact at the Department of

1 Homeland Security?

2 A Again, I think it was -- I think this was  
3 like two or three times.

4 Q And what did you say when you first spoke  
5 to Mr. Hamilton?

6 A Same -- same basic message, we're looking  
7 into the -- exploring the possibility of putting a  
8 census question on -- a citizenship question on  
9 the decennial census, would this be information  
10 that the Department of Homeland Security would  
11 need or use, and could he answer that, and his  
12 response was, let me look into it.

13 Q Now, the Department of Homeland Security  
14 wasn't the original requester for the ACS  
15 citizenship question, to your understanding,  
16 correct?

17 A Correct.

18 Q Was it your view that the Department of  
19 Homeland Security would also be a legitimate  
20 requester of this information?

21 A Legitimate is not the right word, but  
22 the -- I think my view was, let me see if

1 there's -- what their explanation would be, but  
2 they were obviously not our first choice.

3 Q So you were looking for an agency to make  
4 this ask?

5 A Again, my understanding of the process,  
6 based on the research I've been able to do, and  
7 consequently was advising the Secretary was an  
8 agency needed to make the request; therefore, you  
9 have to find an agency that would have a reason to  
10 be using this information. And Justice,  
11 obviously, was the primary recipient of the CVAP  
12 data from the ACS, so they were the logical place  
13 to start. Justice then says go to  
14 Homeland Security, and I say, okay, maybe there's  
15 something about Homeland Security that I don't  
16 know about that might justify this data. So you  
17 follow up on a call, get more information, informs  
18 your decision, you might change it.

19 Q And so my question was: So you were  
20 looking for an agency to make this ask and --

21 A Correct. In order to implement the  
22 process that had been outlined to us, you needed



1 an agency. So that was my task at the time.

2 Q Thank you.

3 MR. COLANGELO: Let's mark this

4 Exhibit --

5 MR. GARDNER: 15.

6 MR. COLANGELO: -- 15.

7 (Plaintiffs' Exhibit 15, Memo, was  
8 marked.)

9 THE WITNESS: The very memo I was  
10 speaking of.

11 BY MR. COLANGELO:

12 Q Exhibit 15 is document stamped 9834.

13 Mr. Comstock, do you have Exhibit 15 if  
14 front of you?

15 A I do.

16 Q Is this the very memo you were just  
17 speaking about?

18 A It's the very memo I was just speaking  
19 about.

20 Q And what's the date on this memo?

21 A September 8th.

22 Q And you see in the second paragraph of

1 this memo, the sentence that says, "James directed  
2 me to Gene Hamilton at the Department of  
3 Homeland Security."

4 A Correct.

5 Q So the person you were speaking to at DHS  
6 was Gene Hamilton, right?

7 A Apparently so, yes.

8 Q The -- in that paragraph -- strike that.  
9 This is a memo from you to the Secretary  
10 dated September 8th of 2017, correct?

11 A Correct.

12 Q Why did you prepare this memo?

13 A Because the Secretary was asking about  
14 the lack of progress and said he was prepared to  
15 call the Attorney General, and so he needed the  
16 timeline of who I had spoken to.

17 Q Okay. What do you mean by lack of  
18 progress?

19 A Well, obviously, we're now September 8th,  
20 and he inquired on May -- May whatever the date  
21 was, 2nd, 5th, whatever it was, saying how come we  
22 haven't made more progress? Three months later we

1 don't have any response from the

2 Justice Department, so --

3 Q In his May 2nd email it said, why has  
4 nothing been done in response to my months' old  
5 request?

6 A That is what it says, yes.

7 Q So the Secretary had been asking about  
8 this since the early spring of 2017?

9 A Yes.

10 Q And you testified and this memo says you  
11 met in person with Mary Blanche and she said what?

12 A Well, as I said, she directed me to  
13 James McHenry.

14 Q And then after speaking with Mr. McHenry,  
15 he told you what?

16 A He directed me to Gene Hamilton.

17 Q Okay. And then after several phone calls  
18 with Gene Hamilton, according to this memo, he  
19 relayed that, "After discussion, DHS really felt  
20 it was best handled by the Justice Department."

21 Do you see that?

22 A I see that.

1 Q Why did Mr. Hamilton feel this was best  
2 handled by the Justice Department?

3 A As relayed to me, DHS felt the agency  
4 that would most utilize this data was  
5 Department of Justice, which was our  
6 original conclusion.

7 Q So DHS said they were not going to make  
8 this request, right?

9 A Well, Gene never made a commitment, one  
10 way or the other, for the department. He simply  
11 directed me back to the other department. It's  
12 not an uncommon experience in the federal  
13 government.

14 Q Tell me what's not uncommon in the  
15 federal government.

16 A Being directed to somebody.

17 Q Your memo then says at that point the  
18 conversation ceased.

19 A Correct.

20 Q What do you mean by that?

21 A Means that I did not talk to  
22 Mary Blanche, James McHenry or Gene Hamilton after

1 that point in time.

2 Q You didn't, at this point, have a request  
3 from the Justice Department, right?

4 A That's correct.

5 Q Okay. And what did you ask  
6 James Uthmeier after that point?

7 MR. GARDNER: Objection. Calls for  
8 information --

9 (Thereupon, the court reporter  
10 clarified.)

11 MR. GARDNER: Sorry. I have a cold.

12 Objection. Calls for information that's  
13 subject to privilege. I'll instruct the witness  
14 not to answer.

15 MR. GERSCH: What privilege?

16 MR. GARDNER: Attorney -- thank you. I  
17 thought we were doing one at a time.

18 Attorney-client privilege.

19 MR. GERSCH: Sorry.

20 BY MR. COLANGELO:

21 Q Did you identify any facts for  
22 Mr. Uthmeier?

1 MR. GARDNER: Objection to form.

2 THE WITNESS: To my knowledge, the first  
3 time I interacted with James, he was in the  
4 Office of General Counsel.

5 MR. COLANGELO: Okay. Okay. Let's mark  
6 Exhibit 16.

7 (Plaintiffs' Exhibit 16, Memo, was  
8 marked.)

9 BY MR. COLANGELO:

10 Q Exhibit 16 is document stamped 2458.

11 Do you have Exhibit 16 in front of you,  
12 Mr. Comstock?

13 A I do.

14 Q Have you seen this email before?

15 A Not since I've sent it to Wendy on  
16 Saturday the 16th of September.

17 Q Why did you send Ms. Teramoto your  
18 September 8th memo on September 16, 2017?

19 A I don't recall exactly, but, likely,  
20 because she may have been setting up the call with  
21 the Attorney General.

22 Q And which call with the Attorney General

1 was that?

2 A A call from the Secretary to talk to the  
3 Attorney General about whether or not Justice  
4 would be interested in a citizenship question.

5 Q And why was the Secretary talking to the  
6 Attorney General about whether or not Justice  
7 would be interested in the citizenship question?

8 A Again, if -- if the -- if the  
9 Justice Department was not going to request the  
10 question, had no use for the information, then  
11 that would probably put an end to the citizenship  
12 question.

13 Q And the Secretary wanted the citizenship  
14 question?

15 A I think he felt -- well, I don't know  
16 what he felt. Yes. He was continuing to explore  
17 that possibility.

18 MS. BOUTIN: I'm sorry. Can you speak  
19 up?

20 THE WITNESS: I don't know what he felt,  
21 but he was continuing to explore the possibility.

22 BY MR. COLANGELO:

1 MR. COLANGELO: This is Exhibit -- no. I  
2 was thinking of Exhibit 10.

3 BY MR. COLANGELO:

4 Q How did you come to the view before ever  
5 talking to DOJ that DOJ should request this  
6 information?

7 A Again, if DOJ was the governmental  
8 organization that had questioned the information  
9 on the ACS, then it would stand to reason that  
10 they would be the people that would also be  
11 interested in the information on the decennial,  
12 and they're also the party responsible for  
13 enforcing the voting rights.

14 Q And how did you come to the view before  
15 ever talking to DOJ that DOJ had a legitimate need  
16 for the question to be included?

17 A If they enforced the Voting Rights Act --  
18 if you're going to make a Voting Rights Act case,  
19 then they would be the people that would  
20 have -- need the information.

21 Q And you researched those Voting Rights  
22 Act cases or that Voting Rights case on your own?



1           A    Again, I think in doing some basic  
2   research on it, it was pointed out there was a  
3   case where the Court had said you could -- you  
4   would need more granule information to answer this  
5   question, which would then support a citizenship  
6   question.

7           Q    And you told me before that you're not a  
8   voting rights lawyer, right?

9           A    Again, what do you mean by a voting  
10   rights lawyer?

11          Q    Have you ever practiced voting rights  
12   law?

13          A    No.

14          Q    Have you ever tried a voting rights case?

15          A    No.

16          Q    Have you ever advised a client on a  
17   voting rights matter?

18          A    No.

19          Q    Have you ever practiced redistricting  
20   law, tried a redistricting case --

21          A    No.

22          Q    -- or advised a client on a redistricting

1 matter?

2 A No.

3 MR. GARDNER: Make sure he finishes his  
4 question before you answer.

5 THE WITNESS: No.

6 BY MR. COLANGELO:

7 Q Have you ever litigated a case under the  
8 Voting Rights Act?

9 A No.

10 Q Have you ever litigated a redistricting  
11 case?

12 A No.

13 MR. COLANGELO: Let's mark as Exhibit 17  
14 a document Bates-stamped 3705.

15 (Plaintiffs' Exhibit 17, Meeting  
16 notification, was marked.)

17 BY MR. COLANGELO:

18 Q Mr. Comstock, do you have 3705 in front  
19 of you?

20 A I do.

21 Q And what is this?

22 A It appears to be some kind of meeting

1 I would instruct the witness not to answer.

2 Can you answer the question without  
3 disclosing confidential communications?

4 THE WITNESS: I have no recollection of  
5 this meeting, so I couldn't tell you what we  
6 discussed.

7 MR. GARDNER: Problem solved.

8 BY MR. COLANGELO:

9 Q Easy enough.

10 Was this your first interaction with the  
11 Office of General Counsel on this issue?

12 A Again, I have no idea.

13 Q As you were talking to Ms. Hankey at the  
14 Justice Department, Mr. McHenry at the  
15 Justice Department and Mr. Hamilton at DHS --

16 A Yeah.

17 Q -- in the spring of 2017, were you  
18 keeping the Secretary informed of those  
19 conversations?

20 A I might have mentioned them.

21 Q In what context would you have mentioned  
22 them?

1           A     Mr. Secretary, I contacted the  
2     Justice Department today. I would not have  
3     given -- I mean, there was nothing to report. So  
4     I hadn't made any progress.

5           Q     Well, he was frustrated there was no  
6     request yet?

7           A     Right.

8           Q     So one of the things to report might have  
9     been --

10          A     That I contacted them, yes.

11          Q     Okay. And did you keep Ms. Teramoto  
12     informed during that time period?

13          A     Again, I might have. At that time  
14     period, we operated in bullpens, so we were  
15     all -- there were five people in the same room.  
16     So it's entirely possible I might have mentioned I  
17     was going to the Justice Department or I had  
18     spoken with the Justice Department, yes.

19          Q     I'm sorry. If you were not finished.

20          A     Nope.

21          Q     Who was sitting in the bullpen with you?

22          A     Wendy Teramoto, Eric Branstad,

1 James Rockas, me, and occasionally Izzy Hernandez.

2 Q Who is James Rockas?

3 A He was acting press secretary at the  
4 time.

5 Q And who is Izzy Hernandez?

6 A Israel Hernandez, he was the acting -- or  
7 I'm not sure what his formal title was. I think  
8 he was deputy chief of staff.

9 Q And where was the bullpen you referred  
10 to?

11 A It was the -- what is now the chief of  
12 staff.

13 Q And there were five of you working in the  
14 office?

15 A Correct.

16 Q How long were the five of you working in  
17 that office together?

18 A Maybe nine months.

19 Q So from January of 2018 through the  
20 end -- strike that.

21 From January 2017 through the end of  
22 the --

1           A     No.

2           Q     -- summer --

3           A     No.   The bullpen was set up, I think, in  
4   March through the end of the year.

5           Q     Why did you work in a bullpen?

6           A     Because that was the form that the  
7   Secretary and Ms. Teramoto felt was most  
8   effective.

9           Q     And was it near the Secretary's office?

10          A     It's located -- there's the Secretary's  
11   office, there's the anteroom to the Secretary's  
12   office, and it's located right next to that.

13          Q     And at some point, you stopped working in  
14   a bullpen?

15          A     Yes.

16          Q     Did it become less effective?

17          A     I think that was the chief of staff's  
18   determination, yes.

19                MR. COLANGELO:   Let's mark Document 3702  
20   as Exhibit 18.

21                (Plaintiffs' Exhibit 18, Email, was  
22   marked.)

1 A Just a minute.

2 Yes.

3 Q Okay. And Exhibit 7 is the email  
4 exchange with Kris Kobach; is that right?

5 A It's an email exchange between  
6 Kris Kobach and Wendy Teramoto.

7 Q And the Secretary, correct, on the second  
8 page?

9 A Yes. Appears to be one to the Secretary  
10 on the second page.

11 Q Okay.

12 A Though it's blanked out as to who it goes  
13 to.

14 Q If I represent to you that the government  
15 has represented to us that this was an email to  
16 the Secretary and that they've blanked out his  
17 name for personal privacy reasons, can we agree  
18 that it's an email to the Secretary on July 14th?

19 A I'll stipulate to that, yes.

20 Q And Mr. Gardner will tell me after lunch  
21 if that's wrong.

22 The -- so you see that the -- that

1 Mr. Kobach, who identifies himself as the Kansas  
2 Secretary of State, emailed the Secretary on  
3 July 14, 2017, correct?

4 A Correct.

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 BY MR. COLANGELO:

8 Q And you'll see that it says I'm following  
9 up on our telephone discussion from a few months  
10 ago, correct?

11 MR. GARDNER: Objection. Lack of  
12 foundation.

13 THE WITNESS: And you're reading from the  
14 email. So I have no idea if the email is correct  
15 or not.

16 BY MR. COLANGELO:

17 Q Did the Secretary ever tell you that he  
18 spoke to Kris Kobach?

19 MR. GARDNER: Objection. Asked and  
20 answered.

21 BY MR. COLANGELO:

22 Q You can still answer.



1 A No.

2 Q Sorry. We were speaking at the same  
3 time.

4 A I don't recall him ever telling me that  
5 he spoke to Kris Kobach.

6 Q This email reads, "As you may recall, we  
7 talked about the fact that the U.S. Census does  
8 not currently ask respondents their citizenship."

9 Do you see that?

10 A I see that.

11 Q The email also reads, "It also leads to  
12 the problem that aliens who do not actually reside  
13 in the United States are still counted for  
14 Congressional apportionment purposes."

15 Do you see that?

16 A I see that.

17 Q Did the Secretary ever tell you he was  
18 concerned about the problem that aliens who do not  
19 reside in the United States are still counted for  
20 Congressional apportionment purposes?

21 A He never expressed an opinion on that.

22 Q And when the Secretary asked you on

1 March 10, 2017 about the census and the  
2 citizenship question, did he ask you in the  
3 context of whether noncitizens should be included  
4 for Congressional apportionment purposes?

5 A He discussed Congressional apportionment  
6 purposes. If asked were the noncitizens counted,  
7 and we answered the question, which is they are  
8 counted.

9 Q Well, you testified the link you sent him  
10 was the link to the Census Bureau's web page on  
11 whether noncitizens are counted for apportionment?

12 A That's correct. Well, I don't believe  
13 you can find a web page on the Census that doesn't  
14 speak to it in that context, whether noncitizens  
15 are counted other than for apportionment. That's  
16 the question that we asked. Do we count  
17 noncitizens? The answer is yes. What is the  
18 Census used for? It's used for apportionment.  
19 That's its primary function.

20 Q And you'll see that -- going back to the  
21 first page of Exhibit 7, Ms. Teramoto has written  
22 to Mr. Kobach, "Kris, can you do a call with the

1 Secretary and Izzy tomorrow at 11:00 a.m.?"

2 A Correct.

3 Q And that's Izzy Hernandez, correct?

4 A I would believe that's the reference  
5 she's making, yes.

6 Q And he's copied at the top of this page,  
7 correct?

8 A Yes, he is.

9 Q Did you ever discuss with Izzy Hernandez  
10 a call with Mr. Kobach and the Secretary?

11 A I did not.

12 Q Did you ever discuss the citizenship  
13 question with Mr. Hernandez, at all?

14 A I think we discussed it once or twice.

15 Q And when were those conversations?

16 A I don't recall exactly.

17 Q Was it in the summer of 2017?

18 A It was sometime in the spring/summer of  
19 2017.

20 Q Okay. So you had been working on the  
21 citizenship question for some number of months by  
22 late July of 2017; is that right?

1           A     Correct.

2           Q     Okay. But your testimony is that the  
3     Secretary had a phone call with Kris Kobach on  
4     that issue and nobody told you about it?

5           MR. GARDNER: Objection.  
6     Mischaracterizes the witness's testimony.

7           THE WITNESS: My testimony is he did not  
8     discuss it with me.

9     BY MR. COLANGELO:

10          Q     Did anyone tell you that the Secretary  
11     spoke to Kris Kobach about this issue?

12          A     Wendy might have mentioned it.

13          Q     And what do you remember Wendy said about  
14     it?

15          A     That the Secretary had a conversation  
16     with Kris Kobach.

17          Q     What did she describe about that phone  
18     call?

19          A     She didn't.

20          Q     And did you ask for any other information  
21     on it?

22          A     I didn't.

1 A Well, obviously, when I wrote it.

2 Q Okay. This is an email from the  
3 Secretary to you on August 8, 2017, and the  
4 Secretary asks were you on the call this morning  
5 about census?

6 Do you see that?

7 A Uh-huh.

8 Q What call is he referring to?

9 A I don't know. I'm not sure I was on it.

10 Q Okay. Did you hear from anybody about a  
11 call on the census on August 8th?

12 A I have no idea.

13 Q And you'll see that later in the email,  
14 the Secretary says, "Where is the DOJ in their  
15 analysis? If they still have not come to a  
16 conclusion, please let me know your contact person  
17 and I will call the AG. Wilbur Ross."

18 Do you see that?

19 A I see that.

20 Q And what analysis is the Secretary  
21 referring to?

22 A Again, this pre-dates the memo I wrote

1 outlining my contacts with the DOJ. So this is a  
2 question about where are we with the DOJ?

3 Q Okay. And you wrote back that evening  
4 saying, "We'll be back shortly with an update on  
5 the census question."

6 A Yes.

7 Q I have two attorneys in the DOC's general  
8 counsel's office working on it?

9 A Yes.

10 Q And you testified one of those two  
11 attorneys was James Uthmeier; is that right?

12 A That's correct.

13 Q And who was the other?

14 A I don't recall.

15 Q Okay. Going back to the Secretary's  
16 email where he says, "If they still have not come  
17 to a conclusion, please let me know your contact  
18 person and I will call the AG."

19 A Yes.

20 Q Did you understand that to mean that the  
21 Secretary was concerned this was not done yet?

22 A He was concerned that we had not made

1 more progress.

2 Q Okay. How did he communicate that  
3 concern to you?

4 A By saying let me know who your contact  
5 person is and I will call the AG.

6 Q This email that you sent in your response  
7 doesn't identify your contact person; is that  
8 right?

9 A That -- well, at least not in the part  
10 that's not blacked out.

11 Q Okay. Do you recall identifying for the  
12 Secretary before the September 8, 2017 memo who  
13 your contact person was at DOJ?

14 A I might have. I probably would have had  
15 to go back and look and see who I spoke to.

16 Q Okay.

17 MR. COLANGELO: Let's mark Document 3984  
18 as Exhibit 20.

19 (Plaintiffs' Exhibit 20, email, was  
20 marked.)

21 THE WITNESS: Thank you.

22 BY MR. COLANGELO:

1 Q Mr. Comstock, have you seen this email  
2 before?

3 A It's to me, so, yes.

4 Q Okay. And this is in further response to  
5 the Secretary's August 8th question; is that  
6 right?

7 A Would appear to be, yes.

8 Q Okay. And it says, "Mr. Secretary, we  
9 are preparing a memo and full briefing for you on  
10 the citizenship question. The memo will be ready  
11 by Friday, and we can do the briefing whenever you  
12 are back in the office."

13 Do you see that?

14 A Yes.

15 Q And at this point, you had not received  
16 any information from the Justice Department; is  
17 that right?

18 A That's correct.

19 Q Okay. So the memo that you're referring  
20 to is a memo on the citizenship question that  
21 includes no input from DOJ; is that right?

22 A I -- I don't know. I had not spoken to



1 DOJ, no.

2 Q You're not aware that anyone else had  
3 spoken to DOJ on it?

4 A Actually, I believe counsel might have  
5 been talking to DOJ, but I don't know who they  
6 were talking to.

7 Q And which counsel is that?

8 A James Uthmeier.

9 Q And did he tell you he was talking to  
10 DOJ?

11 A I don't recall.

12 Q So you're not aware that anybody had been  
13 in touch with DOJ in order to get information for  
14 this memo going to the Secretary?

15 A I -- I'm not sure exactly the contents of  
16 the memo to which you're referring, so I don't  
17 know if it contained information from DOJ or not.

18 Q And the Secretary responded by saying, "I  
19 would like to be briefed on Friday by phone."

20 A Yes.

21 Q So it's fair to say that this reflects  
22 the Secretary's continued impatience about getting

1 an answer to his question?

2 A I would say he clearly wanted to keep  
3 moving forward.

4 MR. COLANGELO: Let's mark as 21  
5 Document 3983.

6 (Plaintiffs' Exhibit 21, email, was  
7 marked.)

8 THE WITNESS: Thank you very much.

9 BY MR. COLANGELO:

10 Q Do you have Exhibit 21 in front of you?

11 A Yes.

12 Q Okay. And this is an email from you to  
13 the Secretary passing along the draft memo on the  
14 citizenship question?

15 A Correct.

16 Q Okay. And you'll see that Wendy Teramoto  
17 responded a few days later saying, "Peter Davidson  
18 and Karen Dunn Kelley will both be here Monday.  
19 Let's spend 15 minutes together and sort this  
20 out."

21 A Right.

22 Q And who is Peter Davidson?

1 Q And we just saw an email from a few weeks  
2 earlier where Ms. Teramoto says let's keep  
3 Mr. Davidson and Ms. Kelley involved in a  
4 conversation about this, right?

5 A I wouldn't say keep, but --

6 Q Introduce them to this conversation?

7 A Introduce, yes.

8 Q So to your understanding, this was a  
9 meeting to discuss the citizenship question?

10 A Again, my understanding of this was to  
11 discuss key legal issues regarding the census.

12 Q Do you remember this meeting?

13 A Not specifically, no.

14 Q Do you remember any meetings with the  
15 Secretary and with this group on the census?

16 A Again, not specifically, no.

17 MR. COLANGELO: Okay. Let's have this  
18 marked as Exhibit 23. It's Document 2424.

19 (Plaintiffs' Exhibit 23, Email, was  
20 marked.)

21 BY MR. COLANGELO:

22 Q Do you have Exhibit 23 in front of you,

1 Mr. Comstock?

2 A I do.

3 Q And do you recognize this document?

4 A Again, it's an email from the Secretary  
5 to me, so presumably I saw it then. There's a lot  
6 blanked out.

7 Q And you understand that the  
8 Justice Department has applied those redactions,  
9 correct?

10 A I do.

11 Q And in this email dated September 1,  
12 2017, the Secretary says, "I have received no  
13 update, nor has there been an updated," -- blocked  
14 out -- "nor the issue of the census question, nor  
15 whether KDB thinks we have our arms around the  
16 census cost data."

17 Do you see that?

18 A Yes.

19 Q And by KDB, do you think he meant KDK?

20 A I believe that would be who he would be  
21 referring to, yes.

22 Q Referring to Karen Dunn Kelley?

1 A Yes.

2 Q And did you understand this to be a  
3 request for information on the status of the  
4 citizenship question?

5 A Well, I understood this to be a request  
6 for information on a whole series of information  
7 that were presented in the census.

8 Q Including the citizenship question?

9 A Including the citizenship. He mentions  
10 that.

11 Q And the Secretary is frustrated, right?

12 A That would appear so, yes.

13 Q He's frustrated because he's asked for it  
14 repeatedly and hasn't seen anything yet telling  
15 him that it's done; is that right?

16 A Well, I would not agree with your  
17 characterization. I think what this memo -- this  
18 email shows is that there were a tremendous number  
19 of issues connected to Census. At this time, we  
20 were working a tremendous amount on the lifecycle  
21 cost estimate.

22 So we -- I mean, we had a huge issue.

1 They were \$3 billion -- basically, 25 percent of  
2 their budget off, which is a shocking figure --

3 Q Does the Secretary --

4 MR. GARDNER: Let him finish his answer.

5 THE WITNESS: -- that does not inspire  
6 confidence in the Census Bureau or its current  
7 leadership at the time. So we were dealing with  
8 quite a few issues connected with Census,  
9 primarily related to the budget, trying to find  
10 people to run the Census that we could count on.  
11 So, yes, citizenship was one small piece  
12 of this, but it was by no means the driving piece.

13 Q Thank you.

14 MR. COLANGELO: Let's mark Document 2034  
15 as Exhibit 24.

16 (Plaintiffs' Exhibit 24, Email, was  
17 marked.)

18 BY MR. COLANGELO:

19 Q Mr. Comstock, do you have Exhibit 24 with  
20 you?

21 A I do.

22 Q Have you seen this email before?

1 it appears there might have been.

2 BY MR. COLANGELO:

3 Q And why would the Secretary have asked  
4 for an update by the next day?

5 MR. GARDNER: Objection. Calls for  
6 speculation.

7 THE WITNESS: As I've mentioned before,  
8 we like to get things done. We're not here to do  
9 this all year long. So I was asked similar  
10 questions on numerous other issues I was working  
11 on.

12 BY MR. COLANGELO:

13 Q But it's fair to say the Secretary wanted  
14 an answer quickly?

15 A He always wants an answer quickly.

16 MR. COLANGELO: Let's mark Document 2395  
17 as Exhibit 25.

18 (Plaintiffs' Exhibit 25, Email, was  
19 marked.)

20 BY MR. COLANGELO:

21 Q Mr. Comstock, do you have Exhibit 25?

22 A I do.

1 Q Okay. Have you seen this document  
2 before?

3 A Yes.

4 Q When's the last time you saw it before  
5 today?

6 A Yesterday counsel pointed it out to me.

7 Q And did you review a version yesterday  
8 that was redacted like this or unredacted?

9 A I did.

10 Q Pardon me?

11 A It was redacted.

12 Q Okay. Like this?

13 A Exactly like this.

14 Q And this is an email from Mr. Uthmeier to  
15 you on the evening of September 7th saying, "Earl,  
16 I touched base with Peter," redacted, "He spoke  
17 with Kassinger this evening."

18 Do you see that?

19 A Yes.

20 Q Who is Kassinger?

21 A That would be Ted Kassinger, former  
22 general counsel for the Department of Commerce.



1 Q And where does Mr. Kassinger work now?

2 A He works at O'Melveny & Myers.

3 Q A law firm?

4 A Correct.

5 Q In Washington?

6 A Yes.

7 Q And what did Mr. Davidson and

8 Mr. Kassinger discuss?

9 MR. GARDNER: Objection -- sorry.

10 Restate that one more time.

11 BY MR. COLANGELO:

12 Q What did Mr. Davidson and Mr. Kassinger

13 discuss?

14 A I don't know.

15 Q Did Mr. Davidson tell you what he and

16 Mr. Kassinger discussed?

17 A Not to my knowledge.

18 Q Did Mr. Uthmeier tell you what he and

19 Mr. Kass- -- what Mr. Davidson and Mr. Kassinger

20 discussed?

21 A Well, it appears he might have, but it's

22 blanked out.

1 Q And Mr. Kassinger doesn't work for the  
2 government, correct?

3 A Correct.

4 Q And did not at the time, correct?

5 A Correct.

6 I would just observe, based on the all  
7 blanked out here, we really have no idea what this  
8 email is referring to. It says a Census matter,  
9 but it could have been any number of things,  
10 including the numerous budget issues we were  
11 talking about. So let's make clear I don't know  
12 what this email was in reference to.

13 Q Okay. Let's take a look at Exhibit 24.

14 A Uh-huh.

15 Q So this appears to be an unredacted  
16 version --

17 A Of the last part.

18 Q -- of the last part --

19 A Right.

20 Q -- which appears to be redacted on 2396;  
21 is that correct?

22 A That certainly seems to be the case, yes.

1 Q They're both dated the same date,  
2 correct?

3 A Same date, same time.

4 Q So --

5 A Just to be precise.

6 Q Thank you. Same date and same time, to  
7 be precise.

8 So on an email chain that you commenced  
9 by saying the Secretary would like an update on  
10 progress since the discussion yesterday regarding  
11 the citizenship question. Is it your  
12 understanding that the reference to the Census  
13 matter in the subject line, in fact, refers to the  
14 citizenship question?

15 A That would appear to be the case.

16 Q Okay. So it would also be your  
17 conclusion that Mr. Davidson and Mr. Kassinger  
18 were talking about the citizenship question; is  
19 that right?

20 A No. It would not.

21 Q Why not?

22 A Because I get lots of email that start on

1 one chain that go to another matter. So it's  
2 possible, but it's also possible it was discussing  
3 something else.

4 Q And did the general counsel talk to  
5 Mr. Kassinger about a lot of issues you were  
6 updated on?

7 A I have no idea what Mr. Davidson and  
8 Mr. Kassinger discussed.

9 Q Do you see the email below the Kassinger  
10 reference?

11 A Uh-huh.

12 Q There's a message from you to  
13 Mr. Davidson, Mr. Uthmeier and Ms. Teramoto that  
14 says, "I suggest setting up a call for tomorrow.  
15 The Secretary is asking for progress on this."

16 A Correct.

17 Q And that's a reference to the citizenship  
18 question, correct?

19 A Without seeing the blanked out matter  
20 below that from Peter Davidson, I don't know if  
21 the email chain switched subjects or not.

22 Q Okay. So your -- your testimony is that

1           A    Again, I think -- I would agree that I  
2   sent an email on the 7th asking for an update on  
3   progress regarding the citizenship question, and I  
4   would agree that I sent a memo to the Secretary  
5   updating him on who I had spoken to at Justice.  
6   But that's all I would know about what the  
7   substance of the conversations were.

8           Q    And then after that exchange, did there  
9   come a time when the Secretary and Attorney  
10   General spoke about this issue?

11          A    Correct.

12          Q    And about how long after was that?

13          A    I don't recall.

14          Q    Was it about a week after?

15          A    Possibly. I would imagine it was on the  
16   Secretary's calendar.

17          Q    And after the Secretary spoke with the  
18   Attorney General, was the substance of that  
19   conversation relayed to you?

20          A    Beyond -- beyond the fact that they had  
21   spoken and that the Attorney General was going to  
22   look into the matter, no.

1 Q Okay. What did you say to the Secretary  
2 about the December 2017 letter when it came in?

3 A Justice Department has requested this, so  
4 now we can start the formal process.

5 Q And what formal process are you referring  
6 to?

7 A Well, as I've outlined before, in order  
8 for the government to take an action, you have to,  
9 basically, create a record and make your decision  
10 on the basis of that record. So without a request  
11 from an agency to ask for the inclusion of  
12 citizenship, you were -- this was, basically, a  
13 hypothetical question.

14 Q Okay. But you had told the Secretary in  
15 May, we will get the Justice Department to request  
16 the question?

17 A I am going to do everything I can to  
18 carry out the Secretary's wishes, if they are  
19 legal, and so I will do my best. I can't promise  
20 things.

21 Q You mentioned in reference to your  
22 May 2nd email that you'd identified a case or

1 Q Ah. If I said --

2 A The prior questions were very focused on  
3 March 2017, so I want to be clear we're now  
4 talking about the following year.

5 Q Absolutely. Sorry. Yes. These  
6 questions -- the question I'm going to ask you now  
7 is about 2018.

8 You recall there was a time,  
9 March 26, 2018, when the Secretary issued a  
10 decisional memorandum regarding his decision to  
11 add a citizenship question?

12 A Yes.

13 Q You worked on that memorandum?

14 A Yes.

15 Q Okay. Were you the principal drafter?

16 A I was one of the principal drafters.

17 Q Who were the other principal drafters?

18 A James Uthmeier was the primary other  
19 drafter.

20 Q Did you have a division of responsibility  
21 between the two of you?

22 A No. I believe he did the first draft.

1 Q He did the first draft?

2 A Well, the Secretary actually probably  
3 made -- indicated what he wanted in a draft and  
4 then James would have put it together.

5 Q And then you would have worked on it  
6 after James?

7 A Correct.

8 Q All right. Was that a typical way in  
9 which the two of you worked?

10 A Sure. I edit lots of documents.

11 Q I mean --

12 (Thereupon, the court reporter  
13 clarified.)

14 THE WITNESS: I edit lot of documents.

15 BY MR. COLANGELO:

16 Q I meant with you and Mr. Uthmeier?

17 A Yeah. It would be unusual for me to  
18 prepare the first draft and him to edit it, yes.

19 Q That's what I'm getting at. All right.  
20 Thank you.

21 And did anyone else work on the draft  
22 besides you, the Secretary and Mr. Uthmeier?



1           A    Yes.   I think numerous other people  
2   reviewed the draft, and --

3           Q    How about people who contributed to the  
4   language?

5           A    Again, without seeing various drafts, it  
6   would be hard to say who contributed to which  
7   language.

8           Q    Okay.   Okay.   Couple more questions  
9   before we take our break.

10                  You were shown earlier today a supplement  
11   to the decisional memorandum --

12           A    Yes.

13           Q    -- issued by Secretary Ross in June of  
14   this year.

15                  You recall that?

16           A    Right.   You're referring to Exhibit 5?

17           Q    Yes.   And there's language in  
18   Exhibit 5 -- get the exact language -- there's  
19   language in Exhibit 5 that says referring to  
20   fundamental issues regarding the upcoming 2020  
21   census, "part of these considerations included  
22   whether to reinstate a citizenship question which

1 MR. GARDNER: Objection.

2 Mischaracterizes the witness's previous testimony.

3 THE WITNESS: My previous testimony was  
4 the Department of Justice sent to the  
5 Department of Commerce, from the Justice  
6 Department to the Office of General Counsel, a  
7 draft document suggesting that the Secretary  
8 needed to sign this. That document was reviewed  
9 by the Office of General Counsel and myself, edits  
10 were made, the document produced, and the  
11 Secretary then signed it.

12 BY MR. GERSCH:

13 Q Yeah. My question was a little  
14 different.

15 My understanding of your testimony this  
16 morning was you recommended that the Secretary  
17 sign this supplemental memorandum based on advice  
18 you received from the Department of Justice; is  
19 that correct?

20 MR. GARDNER: Objection.

21 Mischaracterizes the witness's previous testimony.

22 THE WITNESS: Once again, the

1 Department of Justice, who are our counsel,  
2 suggested that a supplemental memorandum was  
3 needed. This was not something Department of  
4 Commerce generated. This was something the  
5 Department of Justice, as our counsel, recommended  
6 be provided. Following up on that advice, we  
7 worked on the document and then had the Secretary  
8 sign it. We were following advice of counsel.

9 BY MR. GERSCH:

10 Q Well, again, I'm not sure I've got an  
11 answer to my question.

12 My understanding -- well, I'll put it --  
13 without respect to what you testified to this  
14 morning, is it correct that you advised the  
15 Secretary to sign the supplemental memorandum  
16 based, in part, on advice from the  
17 Department of Justice?

18 A Again, I'm not sure I'm following the  
19 logic of your question. But, once again, this  
20 document was produced initially by the  
21 Department of Justice, who sent it to the  
22 Department of Commerce with the recommendation

1 A That's correct.

2 Q Okay.

3 MR. GERSCH: Let's take our short break  
4 here.

5 MR. GARDNER: How long?

6 MR. GERSCH: Ten minutes or so.

7 VIDEOGRAPHER: This is the end of Media  
8 Unit Number 4. The time on the video is 1:58 p.m.  
9 We are off the record.

10 (Off the record.)

11 VIDEOGRAPHER: This begins Media Unit 4.  
12 The time on the video is 2:14 p.m. We are on the  
13 record.

14 BY MR. GERSCH:

15 Q Mr. Comstock, we're back on the record.  
16 Before the break, I was asking some questions  
17 about 2018. Now I want to go back to 2017.

18 A Okay.

19 Q You with me?

20 A I'm with you.

21 Q All right. I want to go back to the  
22 spring of 2017 when Secretary Ross requests the

1 inclusion of a citizenship question on the census.  
2 At that point in time, the Department of Justice  
3 had made no request to Commerce for the addition  
4 of a citizenship question, correct?

5 A That's correct.

6 Q And they certainly hadn't  
7 asked -- withdrawn.

8 The Department of Justice certainly  
9 hadn't asked Commerce to add a citizenship  
10 question because of the VRA. That's also correct;  
11 isn't it?

12 A Well, they didn't ask us to add a  
13 citizenship question at that point. So  
14 speculating as to why they would ask is  
15 irrelevant.

16 Q I'm not asking you to speculate. The one  
17 thing we can be sure of is they didn't ask about  
18 the VRA is because they didn't ask at all?

19 A Correct.

20 Q All right. And when Secretary Ross says  
21 to you in the spring, in whatever words he used,  
22 that he wants a citizenship question added to the

1 census, wouldn't you have had a discussion with  
2 him at the time about why he wants that?

3 MR. GARDNER: Objection. Asked and  
4 answered.

5 THE WITNESS: Again, the answer is no, I  
6 would not have a discussion. My boss, if he asked  
7 me to investigate something, I investigate it and  
8 report back the results.

9 BY MR. GERSCH:

10 Q Is your testimony you did not have a  
11 discussion?

12 A I did not.

13 Q And you're not saying -- well, withdrawn.  
14 Wouldn't it be helpful to you in your job  
15 to assist the Secretary to have an understanding  
16 of why he wanted the citizenship question?

17 MR. GARDNER: Objection. Form.

18 BY MR. GERSCH:

19 Q You can answer.

20 A Again, I didn't have any particular  
21 doubts about why a citizenship question would be  
22 useful, so, no, it would not have hurt me to ask.

1 Q I'm not asking whether you had doubts.  
2 My question to you is a little bit --

3 A I understand your question.

4 Q My question, sir, is: Wouldn't it be  
5 helpful to you in your job of assisting the  
6 Secretary to have a complete understanding of why  
7 the Secretary wants to add a citizenship question?

8 MR. GARDNER: Objection. Form.

9 THE WITNESS: Again, it's not relevant to  
10 the question of whether or not he needs -- of  
11 whether or not a question should be added, so, no.

12 BY MR. GERSCH:

13 Q Is it your testimony that why he wants a  
14 citizenship question to be added is not relevant  
15 to whether it should be added? Did I -- did I  
16 hear that right?

17 MR. GARDNER: Objection.  
18 Mischaracterizes the witness's prior testimony.

19 THE WITNESS: My test- --

20 MR. COLANGELO: That's exactly what he  
21 said, Counsel.

22 THE WITNESS: No. My testimony is: The

1 rationale for why he would want it added is not  
2 relevant to my initial inquiry as to whether or  
3 not a question can be added.

4 BY MR. GERSCH:

5 Q Yeah. My question was a little  
6 different. The question I am trying to get you to  
7 focus on is: In your work for the Secretary,  
8 wouldn't it be helpful to you to understand as  
9 fully as possible why he thinks it's a good idea  
10 to add a citizenship question?

11 A And let --

12 MR. GARDNER: Objection. Asked and  
13 answered.

14 THE WITNESS: And let me get you to  
15 understand my answer, which is, no, it would not  
16 make a difference, because I don't need that  
17 information to investigate the question.

18 BY MR. GERSCH:

19 Q Anyone ever say anything to you about why  
20 the Secretary thought it was a good  
21 idea -- withdrawn.

22 Am I right that your testimony is that



1 Q No one says the reason the Secretary  
2 wants to add a citizenship question is whatever  
3 the reason is, no one ever said anything like  
4 that?

5 A No.

6 MR. GARDNER: Objection to form.

7 THE WITNESS: Not to my recollection.

8 BY MR. GERSCH:

9 Q Okay. Did you ever have a discussion  
10 with people from the Office of General Counsel at  
11 Commerce about why the Secretary wanted to add a  
12 citizenship question?

13 A No.

14 Q And in your time there, did you never see  
15 a document analyzing why it was a good idea for  
16 Census to add a citizenship question?

17 A Again, you're -- we have a fundamental  
18 disagreement on the premises of your question.  
19 Your premise is that somehow a reason needs to be  
20 provided. The question before us is the Secretary  
21 has the legal authority to add questions to the  
22 census. Is there a governmental need? And if

1     there is, then you're off to the races.

2           Q     My question was a little different. My  
3     question was --

4           A     I understand your question.

5           Q     Sir, I'll repeat it for you.

6                     My question is: In all the time you're  
7     there, did you never see a document spelling out  
8     the reasons why it would be a good idea to add a  
9     citizenship question? Why it would be good from  
10    Commerce's perspective?

11                   MR. GARDNER: Objection. Form.

12                   THE WITNESS: Again, that's not the  
13     question. Commerce --

14     BY MR. GERSCH:

15           Q     Excuse me, sir. That is my question.  
16     Could you answer my question?

17           A     Okay. No.

18           Q     Not even a scrap of paper, right?

19           A     Nope.

20           Q     No memoranda, right?

21           A     No.

22           Q     No emails?

1           A    Not that I recall.

2           Q    And I just want to be straight on my  
3   understanding.   I think I got you correctly, but I  
4   just want to make sure and test that I'm right.

5                It couldn't possibly assist you in your  
6   work, in any way, to know why the Secretary wanted  
7   to add a citizenship question?   Do I understand  
8   that correctly?

9           A    It's not relevant to my analysis.

10          Q    And so it couldn't possibly help you in  
11   any way in your work?

12          A    I'm not going to agree with your  
13   statement that way, no.

14          Q    Well, that's my question -- withdrawn.

15                Well, is there any way in which knowing  
16   what the Secretary's reason was for wanting to add  
17   a citizenship question, is there any way that  
18   could assist you in your work at  
19   Department of Commerce?

20          A    Assist me on my work at the Department of  
21   Commerce, no.

22          Q    Is there any way that it could help you

1 help the Secretary add a citizenship question?

2 A If I had found it difficult or  
3 challenging, yes. Knowing more about why he  
4 wanted it would have been helpful, but I didn't  
5 say that there was an issue. It had been asked  
6 for hundreds of years, and it had been asked on  
7 the ACS. So, clearly, there's a need for it. And  
8 so, no, that was not a particularly troublesome  
9 aspect of the question I was being asked to look  
10 into.

11 Q When you said if I had found it difficult  
12 or challenging, what did you mean? What's the it?

13 A If -- if what I had been requested to do  
14 seemed to have significant legal obstacles to the  
15 ability to do that question or take that action,  
16 then I would probably inquire more fully to see if  
17 there's an alternative way to address what the  
18 Secretary is trying to get to. In this particular  
19 case, you have something that has been on the  
20 decennial census before that is currently being  
21 asked on the ACS. There's clear legal authority  
22 for him to add the question. So, frankly, the

1 reasons that he wants to add it doesn't add  
2 anything to the analysis. There is a governmental  
3 need for this information. That's a question  
4 that's already established, so I don't need to  
5 inquire further as to what his personal beliefs  
6 regarding this question might be.

7 Q What's the governmental need for the  
8 question?

9 A Enforcement to the Voting Rights Act,  
10 determining how many undocumented citizens there  
11 are. You name it, there's a whole bunch of  
12 reasons. That's why every government in the world  
13 collects this information.

14 Q Well, correct me if I'm wrong, we're  
15 talking about at a period in the spring of 2017  
16 when the Voting Rights Act hadn't come up, the  
17 Department of Justice hadn't made a request for  
18 it. What does the Voting Rights Act got to do  
19 with it in the spring of 2017?

20 A When you inquire as to what does the  
21 Department of Justice use the citizenship data  
22 on --

1 Q That wasn't my question. My question  
2 is --

3 A I'm answering your --

4 Q -- why is it a good idea, why does the  
5 government need it back in the spring of 2017?

6 A Finished with your question?

7 Q That's my question.

8 A The answer is for the same reason they've  
9 been collecting it for the last 200-plus years.

10 Q What's the government need in the spring  
11 of 2017?

12 A I already answered that question. If  
13 they collect the data under the ACS for Voting  
14 Rights Act enforcement, that is one of the primary  
15 reasons they collect the data.

16 Q Okay. It's on the ACS. What's the  
17 need -- governmental need for it to be on the  
18 census?

19 MR. GARDNER: Objection. Asked and  
20 answered.

21 THE WITNESS: The governmental need is,  
22 again, if you're going to get more detailed

1 information, then you need that information.

2 BY MR. GERSCH:

3 Q Who said in the spring of 2017 that the  
4 government needed more detailed information?

5 A Again, I'm presented with a request by  
6 the Secretary to say, can we add this question to  
7 the census? I inquire about that, and I looked at  
8 it. One of the reasons you would need it is  
9 voting rights. If you're going to do voting  
10 allocations on the basis of census allocations,  
11 that's the reason it's perfectly sufficient.

12 Q Who said that in the spring of 2017?

13 A That was -- that was determined after  
14 taking a quick look at the issue. I don't need  
15 more than that to continue to pursue the question.

16 Q Who told you that the government needed,  
17 in the spring of 2017, more detailed information  
18 about citizenship than was contained in the ACS?

19 A Nobody.

20 Q You came to that decision on your own; is  
21 that right?

22 A Correct.

1           Q    But you're not a voting rights lawyer,  
2   right?

3           A    Irrelevant to the question.

4           Q    That's not my question.  You're not a  
5   voting rights lawyer, right?

6           A    I've already said that.

7           Q    So you decided on your own in the spring  
8   of 2017 that it would be a good idea for the  
9   government to have more information than was  
10  available from the ACS about citizenship to  
11  enforce the Voting Rights Act, even though you're  
12  not a voting rights lawyer?

13          A    I don't agree with that characterization,  
14  at all.  I decided that there was sufficient  
15  information for me to pursue the Secretary's  
16  request to consider placing a citizenship question  
17  on the decennial census and that there was  
18  sufficient potential reason to collect that  
19  information to warrant moving forward.  If I'd  
20  come to an opposite conclusion that there was not  
21  sufficient potential reason or that there was some  
22  insurmountable legal bar, then I would have



1 reported back to the Secretary, I'm sorry,  
2 Mr. Secretary, it does not appear we can  
3 accomplish this objective.

4 Q Why did you need to come up with a reason  
5 for asking the question, separate and apart from  
6 whatever reason the Secretary had in his own head?

7 A Again, my job is to figure out how to  
8 carry out what my boss asks me to do. So you go  
9 forward and you find a legal rationale. Doesn't  
10 matter what his particular personal perspective is  
11 on it. It's not -- it's not going to be the basis  
12 on which a decision is made.

13 Q That's your understanding, that the way  
14 you should do it, is come up with a rationale that  
15 has nothing to do with what's in the Secretary's  
16 mind as to why he wants it; is that your  
17 understanding of how it's supposed to work?

18 A No. Again, you continue to characterize  
19 things in a way that you believe may be correct,  
20 but not the way I believe to be correct. My job,  
21 as a person who has been doing this for 30-plus  
22 years for clients and people in the government, is

1 if they would like to accomplish an objective, I  
2 see if there's a way to do that. And, again, if  
3 it's not legal, you tell them that. If it can't  
4 be done, you tell them that. If there's a way to  
5 do it, then you help them find the best rationale  
6 to do it. That's what a policy person does.

7 And so, again, if I came up with a  
8 rationale that the Secretary didn't agree with or  
9 didn't support, then he was going to tell me that.  
10 I have no doubt about that. But in the meantime,  
11 he doesn't -- I don't need to know what his  
12 rationale might be, because it may or may not be  
13 one that is -- that is something that's going to a  
14 legally-valid basis.

15 So, again, he's got -- he's asked, can we  
16 put -- can we put a question on? The job of a  
17 policy person is go out and find out how you do  
18 that. Whether that decision is going to be made  
19 ultimately to do it or not, that's up to the  
20 decision-maker.

21 Q Are you saying you're better off not  
22 knowing what the Secretary's own rationale is for

1 A That's correct.

2 Q Counsel asked you about contact you made  
3 with the Department of Justice --

4 A Correct.

5 Q -- starting with a Ms. Haney [sic], I  
6 believe.

7 Do you recall that?

8 A Yes. I believe her name is Hankey,  
9 but --

10 Q Hankey. I apologize.

11 What was the full name? I can get it out  
12 if you don't know it offhand.

13 A Mary Blanche, but --

14 Q I'll find it in here.

15 A It's in one of these exhibits, the memo  
16 that I wrote. Here.

17 Q Mary Blanche --

18 A Yep.

19 Q -- Hankey; is that right?

20 A Yeah.

21 Q All right. So you went -- you called

22 Mary Blanche Hankey --

1 A Correct.

2 Q -- with regard to adding a citizenship  
3 question to the census, right?

4 A Correct.

5 Q And you wanted to see if the  
6 Department of Justice would sponsor the question?

7 A Correct.

8 Q And you had a phone call with her, and  
9 you had at least a meeting with her, right?

10 A Right.

11 Q So at least two contacts?

12 A Three, when she called me back with  
13 somebody else's name.

14 Q Fair enough.

15 Didn't -- didn't Ms. Hankey say, why do  
16 you want to have a citizenship question?

17 A No, she didn't.

18 Q Didn't come up, at all?

19 A Nope.

20 Q She referred you to a Mr. McHenry; is  
21 that right?

22 A Correct.

1 Q And he's not a voting rights guy, right?

2 A I don't actually know what his background  
3 is.

4 Q Well, you went ahead, back and forth with  
5 him over about a month; is that right?

6 A I mean, we spoke on the phone probably  
7 three or four times, yeah.

8 Q Going from, I think, the period you  
9 mentioned was --

10 A Yeah. It was --

11 Q -- early May to early June, roughly?

12 A Approximately a month, yeah.

13 Q And didn't you learn in that time that  
14 he's not a voting rights guy?

15 A No.

16 Q Never came up?

17 A We didn't get into great detail on the  
18 rationale.

19 Q You did ask him would you sponsor a  
20 census question for -- I'm sorry. Withdrawn.

21 You did ask Mr. McHenry if he would be  
22 willing to sponsor a request for the addition of a

1 citizenship question on the census, right?

2 A I didn't ask Mr. McHenry if he would. I  
3 asked if the Department of Justice would be  
4 inclined to send a letter asking us to add the  
5 citizenship question.

6 Q Fair enough.

7 And when you did that, you didn't explain  
8 to Mr. McHenry why the Secretary wanted a  
9 citizenship question?

10 A I would have no reason to.

11 Q And Mr. McHenry never asked, hey, you  
12 want me to do this? Why do you need it? He never  
13 asked you that?

14 A I think I explained at the outset that  
15 the department currently got a report from the ACS  
16 on citizenship level -- I mean, on  
17 census -- certain census size, Citizen Voting Age  
18 Population, and if they were to get it from the  
19 decennial, that would allow them a greater  
20 granularity and would that be useful to them, and  
21 he said he would inquire.

22 Q You asked Mr. McHenry if the

1 Department of Justice would find it useful to have  
2 more granularity about citizenship?

3 A Correct.

4 Q But at no point did Mr. McHenry say,  
5 look, if we want it, we'll ask for it, but how  
6 come you want it? Didn't he ask you something  
7 like that?

8 A No.

9 Q When people call you and say, hey, will  
10 the Department of Commerce do this or do that,  
11 don't you say, why do you want that, why do you  
12 need that?

13 A I usually say is there a reason that you  
14 think the Department of Commerce would need  
15 that -- and if they have a reason, then I'll look  
16 into it. I don't say, hey, why does your boss  
17 want this? That's not part of lexicon.

18 Q No. No. If another agency calls and  
19 says --

20 A I don't --

21 Q Let me finish the question and you can  
22 answer any way you want.

1           If another agency calls and says, will  
2     the Department of Commerce do such and such,  
3     whatever it is --

4           A     Right.

5           Q     -- don't you say to them in some form or  
6     another, why do you want this?

7           MR. GARDNER:  Objection.  Hypothetical.

8     BY MR. GERSCH:

9           Q     Why does your agency need this?

10          MR. GARDNER:  Objection.  Hypothetical.

11          THE WITNESS:  Again, I don't question why  
12     their boss might want it.  I might say, what is it  
13     you think we can provide or why do you think the  
14     Department of Commerce is the right agency for  
15     this?  But if they say we need this data because  
16     we're negotiating a trade agreement, whatever,  
17     that's fine.  I don't question their basis.

18     BY MR. GERSCH:

19           Q     Okay.  But if I understood your last  
20     answer, you added something important, you said,  
21     if they call and say we need this for the trade  
22     ag- -- trade agreement, you say I don't question



1 them. But if they don't give a reason, sir, don't  
2 you say to them, why do you want it?

3 MR. GARDNER: Objection. Calls for a  
4 hypothetical.

5 THE WITNESS: Again, I already provided  
6 the reason for Department of Justice. I said,  
7 would it be useful for you to have more granular  
8 voting data at the census lock level? He said he  
9 would inquire. That answers your question. I'd  
10 already provided the answer.

11 BY MR. GERSCH:

12 Q Mr. McHenry comes back at some point and  
13 he says he's not interested, right, in words or  
14 substance?

15 A He suggested that I contact the  
16 Department of Homeland Security.

17 Q But I take it he makes it clear to you in  
18 some fashion -- withdrawn.

19 Let's start with this. What did he say  
20 to you?

21 A He suggested I talk to the Department of  
22 Homeland Security.

1 Q Did he also say, listen, I don't really  
2 need that information, or my guys don't need that  
3 information, or my department doesn't need that  
4 information or something like that?

5 MR. GARDNER: Objection to form.

6 THE WITNESS: Again, no, he did not  
7 indicate that they did not need the information.  
8 He simply suggested that they were rather busy and  
9 why don't I talk to the Department of  
10 Homeland Security.

11 BY MR. GERSCH:

12 Q It's your testimony that he said they  
13 were too busy to do it?

14 A Unfortunately, that's not an uncommon  
15 response from other agencies. They don't  
16 necessarily look for extra work.

17 Q Okay. So they were too busy to ask for  
18 it, that's what you understood them to say?

19 A Yeah. Their inclination was they weren't  
20 inclined to do the work, to ask for it, yeah.

21 Q Okay. Okay. So Mr. McHenry let's you  
22 know he's not inclined or the department is not

1 inclined to do the work, to ask for it, and he  
2 refers you to Homeland Security, correct?

3 A Correct.

4 Q And you speak to a Mr. Hamilton, right?

5 A Right.

6 Q And Mr. Hamilton, he's not a VRA guy,  
7 right?

8 A I have no idea what his background is.

9 Q Certainly, it's your understanding that  
10 the Department of Homeland Security has nothing to  
11 do with enforcing the Voting Rights Act?

12 A It would not normally be something I  
13 would think they would do, no.

14 Q And you talked to Mr. Hamilton how many  
15 times?

16 A I don't know, three or four times.

17 Q Over what period?

18 A Again, two weeks. I don't know.

19 Q And don't you say to Mr. Hamilton, here's  
20 why we want the information, here's why we want  
21 you to ask for the citizenship question?

22 A Again, it was the same explanation as I

1 gave the Department of Justice. And as you  
2 pointed out, DHS doesn't really do that. So I was  
3 simply following up on the suggestion that  
4 Mr. McHenry had made, and perhaps there was  
5 something that DHS did that I was unaware of that  
6 would have them -- have the need for this  
7 information. Turns out they didn't, so back to  
8 Square 1.

9 Q Yeah. My question is -- and maybe I  
10 didn't phrase it exactly right.

11 Did you explain to Mr. McHenry [sic] in  
12 any of these several calls, here's why it's  
13 important to the Department of Commerce, or your  
14 boss or whomever, here's why it's important  
15 that -- to get a citizenship question added?

16 MR. GARDNER: I think you mean  
17 Mr. Hamilton. You said Mr. McHenry.

18 MR. GERSCH: Withdrawn. Let me rephrase.  
19 Thank you, Counsel.

20 BY MR. GERSCH:

21 Q In any of these several calls, you say to  
22 Mr. Hamilton, here's why it's important to

1 Department of Commerce to have you folks request  
2 the addition of a citizenship question.

3 A No. I never explained that to him.

4 Q And is it your testimony that in your  
5 several conversations with Mr. Hamilton, he never  
6 says, hey, why do you want this?

7 A That's correct.

8 Q He never says, why do you want a  
9 citizenship question added?

10 A Again, when somebody calls up and says --  
11 my boss, you know, Secretary Ross, AG Sessions,  
12 whomever has asked us to pursue this, I don't  
13 typically question back and say, well, why do you  
14 think -- does your boss think this is needed? I  
15 just don't do that. It's kind of discourteous to  
16 other staff. So no, he took me at face value.  
17 I'm calling to inquire, would they find this  
18 useful? He gets back to me, no.

19 Q I just want to make sure I caught part of  
20 what you're saying correctly.

21 Are you saying it would have been  
22 discourteous for Mr. Hamilton at Homeland Security

1 to say, hey, why do you guys at Commerce want us  
2 to ask for a citizenship question?

3 A For him to challenge why my boss might  
4 ask for it.

5 Q I didn't say challenge.

6 Is it your testimony it would be  
7 discourteous for him to say, hey, you're asking me  
8 to do something --

9 A Uh-huh.

10 Q -- something which involves some work --

11 A Uh-huh.

12 Q -- would you just explain to me why it's  
13 important for you to have me ask for a citizenship  
14 question?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No such conversation  
17 occurred.

18 BY MR. GERSCH:

19 Q Yeah. My question is: Would that have  
20 been discourteous for him to say that to you?

21 A Depends on how he phrased it.

22 Q He could have phrased it in a way that

1 was properly respectful, right?

2 A Theoretically, yes.

3 Q In the time that you were dealing with

4 Mr. McHenry or getting ready to deal with

5 Mr. McHenry -- this is back at the Justice

6 Department now -- did you ever learn that he was

7 director of the Executive Office of Immigration

8 Review?

9 A I never learned that, no.

10 Q How about Ms. Hankey, did she say why she

11 was going to refer you to Mr. McHenry?

12 A No, she didn't.

13 Q Is it common for you to call people like

14 Mr. McHenry without knowing what their position

15 is?

16 A Certainly at that time, yes.

17 Q What was it about that time?

18 A Well, it was shortly into the

19 administration, and titles are not necessarily

20 informative of what people do, so --

21 Q Did you have an understanding of what

22 Mr. McHenry's portfolio was, independent of his

1 title?

2 A No.

3 Q About what his expertise was independent  
4 of his title?

5 A No.

6 Q You didn't know -- withdrawn.

7 You're trying to accomplish something for  
8 your boss, right?

9 A Correct.

10 Q And you're calling another agency and  
11 you're going to ask them to do some work, right?

12 A Right.

13 Q And you know from your vast experience  
14 that sometimes people just say no because they  
15 just don't want to do the work, right?

16 A Correct.

17 Q That's not uncommon, right?

18 A It's been my experience.

19 Q So in order to have the best possible  
20 chance of persuading a person like Mr. McHenry,  
21 don't you want to do a little research beforehand?

22 A Again, I was dealing with, literally,



1 hundreds of issue, as well as clearing  
2 correspondence, clearing Federal Register notices,  
3 no. I did not have time to research this guy's  
4 background. That's why I went through  
5 Eric Branstad to say, hey, get me somebody over at  
6 DOJ who I can talk to. I want to Hankey -- and I  
7 don't know her from Adam, but relying on the fact  
8 that she was recommended by folks over at the  
9 White House as somebody who was connected with  
10 AG Sessions, I'm assuming she's going to steer me  
11 in the right direction. So I take on faith who  
12 she suggested I talked to. Turned out they  
13 weren't the right person, so we didn't get  
14 anywhere.

15 Q Did you have an assistant during this  
16 period?

17 A No.

18 Q Any staff?

19 A I had my OPSP staff.

20 Q Who's that?

21 A Office of Policy and Strategic Planning.  
22 They were the detailees I discussed earlier.

1 Q Got it.

2 You couldn't ask one of them, hey, I'm  
3 supposed to have a call with Mr. McHenry, can one  
4 of you figure out what he is and why --

5 A No.

6 Q Excuse me. I got to -- just a second.  
7 I've got to finish the question. You can answer  
8 it any way you want.

9 Didn't you want to call -- talk to one of  
10 your staff people and say, listen, I got a call  
11 with Mr. McHenry, I got to persuade him to do some  
12 work he's not going to want to do, to help out our  
13 boss, Mr. Ross, Secretary Ross, and can one of  
14 your look up and tell me who he is and what levers  
15 we might be able to pull to persuade him to do  
16 this work for us?

17 MR. GARDNER: Objection.

18 BY MR. GERSCH:

19 Q You didn't want to ask someone on your  
20 staff to do some work like that for you?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, that's a view of

1 both the workload I was under and the workload  
2 that they're under that I think is misinformed.

3 In fact, several of my calls with  
4 Mr. McHenry were made while I was driving into  
5 work, so there was no opportunity to call somebody  
6 and do that research.

7 And, besides, this wasn't about getting  
8 leverage on Mr. McHenry. This was simply to  
9 ask -- following up on the person I'd been  
10 directed to, who, based on the fact that it was  
11 recommended by an assistant to the AG, I'm  
12 assuming is going to at least be somewhat  
13 receptive. Probably an error on my part, but  
14 that's -- I've got a dozen other things I'm  
15 dealing with at the same time. So, no, I'm not  
16 going to spend a lot of time researching this guy.

17 BY MR. GERSCH:

18 Q You didn't spend any time researching  
19 this guy?

20 A Correct. I didn't.

21 Q Secretary Ross certainly knows why he  
22 wanted a citizenship question back in the spring

1 of 2017, right?

2 A You'd have to ask him.

3 Q Is there anyone besides Secretary Ross  
4 who we could go to who would have that  
5 information?

6 MR. GARDNER: Objection. Lack of  
7 foundation. Calls for speculation.

8 THE WITNESS: I'm not aware of anybody.

9 BY MR. GERSCH:

10 Q Do you have any reason to believe that  
11 Secretary Ross's rationale for wanting to add a  
12 citizenship question is some kind of supersecret?

13 A No.

14 Q Doesn't involve national security, right?

15 MR. GARDNER: Objection. Lack of  
16 foundation. Calls for speculation.

17 THE WITNESS: I don't know what the  
18 Secretary's rationale is. You'd have to ask him.

19 BY MR. GERSCH:

20 Q But you don't think it involves national  
21 security?

22 MR. GARDNER: Same objections.

1 THE WITNESS: I'm not going to speculate  
2 on that.

3 BY MR. GERSCH:

4 Q You heard about this suit back when it  
5 was filed, right, this lawsuit?

6 A Yeah.

7 Q Okay. And there's several lawsuits,  
8 right?

9 A Lost count, but yes.

10 Q And you've known that you were going to  
11 sit for a deposition for a while, also?

12 A Maybe for two weeks or so.

13 Q Okay. Well, at any time since these  
14 lawsuits started to get filed, did you have a  
15 discussion with anyone about why it is the  
16 Secretary wanted a citizenship question added?

17 A No.

18 Q Secretary Ross gave Congressional  
19 testimony in March of 2018 in advance of his  
20 decisional memorandum. Do you remember that?

21 A I'll take your word for it.

22 Q Testified before committees of both --

1 both House, right?

2 A Again, I'd have to look at a calendar to  
3 refresh my memory as to when he testified. But,  
4 yes, he testified to Congress during the course of  
5 the year.

6 Q Fair enough.

7 And he was asked questions about a  
8 citizenship question?

9 A I believe that's correct.

10 Q Who prepared him to testify on that  
11 subject?

12 A He -- he does a lot of his own hearing  
13 prep, but we would have -- I would have been  
14 involved, as well as James Uthmeier,  
15 Peter Davidson, of course, Karen Dunn Kelley. I  
16 mean, this was not a hearing specifically on the  
17 citizenship question, so we mostly would have been  
18 preparing for the broad range of questions on  
19 whatever the topic was. We were going up and  
20 testifying on the steel tariffs. We were going up  
21 and testifying on the lifecycle cost estimate, a  
22 whole series of things, so --

1 Q Sure. You want to get him prepped on  
2 everything, though, right?

3 A Yeah.

4 Q And one of the things that you  
5 anticipated would come up was the question about  
6 the citizenship question, right?

7 A Seems reasonable if that was the time  
8 frame, yes.

9 Q And were you the one who worked with  
10 Secretary Ross on how he was going to answer those  
11 questions?

12 A I would have been one of the people, yes.

13 Q Was there a division of responsibility  
14 between the folks you mentioned just a minute ago,  
15 the people who helped prepare him?

16 A Not per se. I think he's fairly open to  
17 suggestions from staff of what to consider. So if  
18 somebody had an idea, he would consider it.

19 Q Did you tell the Secretary, listen, you  
20 can expect that someone is going to ask  
21 whether -- whether you're going to add a  
22 citizenship question? Did you have that

1 discussion with him? That would have been normal,  
2 right?

3 A Well, again, if this is in the time  
4 period after we received the DOJ letter and while  
5 he was considering making his decision, then, yes,  
6 we might have anticipated. But the answer would  
7 have been fairly straightforward, which is we have  
8 that matter under review, and I'm considering  
9 all -- all information. So there would have been  
10 very little we're prepping for on that.

11 Q Didn't you discuss with the  
12 Secretary -- withdrawn.

13 First of all, I'll represent that he  
14 did -- the Secretary did, in fact, testify before  
15 multiple committees after the  
16 Department of Justice request came in in December  
17 of 2017 and before the issuance of the March  
18 decisional memorandum.

19 A Okay.

20 Q And my question to you is: In those  
21 discussions that you had with the Secretary to  
22 prepare him, wasn't it discussed whether the



1 Secretary was going to reveal the reasons he had  
2 wanted to the addition of a citizenship question?

3 A No.

4 Q Subject never came up?

5 A Never came up.

6 Q Didn't it come up whether the Secretary  
7 would reveal that the reason that Commerce had  
8 received a request from DOJ to add a citizenship  
9 question is because Commerce had gone to DOJ and  
10 asked DOJ to make that request?

11 A No.

12 Q Never came up?

13 A Never came up.

14 (Conference call interruption.)

15 THE WITNESS: In case we were falling  
16 asleep.

17 BY MR. GERSCH:

18 Q You testified with respect to the  
19 citizenship question; isn't that right?

20 A That's correct.

21 Q You gave testimony before the House  
22 Committee on Oversight and Government Reform?

1 Voting Rights Act was not available."

2 That's the testimony you gave, correct?

3 A Again, this is not the official  
4 transcript, but presuming your person transcribed  
5 this correctly, that appears to be what I said.

6 Q And this squares with your memory of what  
7 you said, right?

8 A Correct.

9 Q And when she says, why did this question  
10 get added, and you say, we received a request from  
11 the Department of Justice, that's not the whole  
12 truth; is it?

13 A That's a -- that's a factual statement.

14 Q It's a factual statement that you  
15 received a request from Department of Justice,  
16 right?

17 A Correct.

18 Q But the reason the Department of Justice  
19 made the request is because you guys at the  
20 Department of Commerce put them up to it; isn't  
21 that right?

22 A I don't agree with that characterization.

1 But, again, the Department of Justice decided that  
2 this was information they could use and they made  
3 the request. That starts the formal process for  
4 us to review the question. Had they decided they  
5 did not need that information and not made the  
6 request, then the Commerce Department would have  
7 had to decide if there was some rationale that the  
8 Commerce Department needed this information.

9 Q Sure. But the reason the  
10 Department of Justice made this request of the  
11 Department of Commerce was that the Department of  
12 Commerce went to the Justice Department and said,  
13 will you please make this request of us, right?

14 A We asked them if they could use this  
15 information. That was an independent decision on  
16 their part.

17 Q You asked them if they could use  
18 information from a citizenship question, right?

19 A At the block level, which is not  
20 currently available.

21 Q And you asked them if they would be  
22 willing to request that from the

1 Department of Justice [sic]?

2 A If that was information that they found  
3 useful, then they could request it, yes.

4 Q You asked them to request it from the  
5 Department of Justice, correct?

6 A Again, what we asked them was if they  
7 could use this information, and if so, then they  
8 would need to request it.

9 Q Do you deny that you personally went to  
10 representatives in the Department of Justice and  
11 asked them if they would request the addition of a  
12 citizenship question?

13 MR. GARDNER: Objection. Asked and  
14 answered.

15 THE WITNESS: To answer, once again, I  
16 went to representatives of the  
17 Department of Justice and asked them if this would  
18 be information that they would find useful, and if  
19 so, they could request it.

20 BY MR. GERSCH:

21 Q Yeah. I got that part, and I'm asking a  
22 slightly different question now.

1           A     Okay.

2           Q     Didn't you say to the  
3     Department of Justice when you were talking to  
4     them, in words or substance, we would appreciate  
5     it if you would ask us to include a citizenship  
6     question?

7           A     I never made such a request.

8           Q     And I take it, based on your prior  
9     testimony, you don't know what conversation  
10    occurred between the Secretary and the Attorney  
11    General?

12          A     That's correct.

13          Q     Did you understand that Ms. Teramoto was  
14    on that call between the Secretary and the  
15    Attorney General?

16          A     I don't know who was on the call.

17          Q     In any case, however we word it, you  
18    didn't tell Representative Norton when she asked  
19    why is this question being added, that you had  
20    gone to the Department of Justice and suggested  
21    that this might be something they'd be interested  
22    in?

1 Q Let me put a different question to you.

2 A Sure.

3 Q When Representative Norton asks you the  
4 why question, don't you think it's responsive to  
5 the why question that the Secretary of Commerce  
6 wanted to add a citizenship question independent  
7 of the Department of Justice's request?

8 A No. I don't think it's relevant. His  
9 decisional memo laid out very clearly the  
10 rationale that was the basis of his decision.  
11 Whatever his personal feelings may have been are  
12 irrelevant to that decision.

13 Q It laid out a rationale. We can agree on  
14 that, right?

15 A That's what he's required to do under the  
16 law, is lay out a rationale. That is the  
17 rationale for his decision and that's what he's  
18 standing on.

19 Q Okay. He laid out a rationale. Is it  
20 your understanding, under the law, that if the  
21 rationale is not his real reason for doing it, we  
22 should ignore the real reason, and we should only

1 focus on the pretextual reasons that he offers up?

2 MR. GARDNER: Objection. Calls for a  
3 legal conclusion.

4 THE WITNESS: The Secretary's decision  
5 memo lays out a valid reason that's consigned to  
6 his discretion under the law, and that is the  
7 rationale he provided to staff, and that is the  
8 rationale that we placed in the record. So that  
9 is his reason for having the question.

10 BY MR. GERSCH:

11 Q My question is a little different. If  
12 the Secretary's real rationale is something  
13 different than the rationale he lays out in his  
14 decisional memo, is it your understanding, under  
15 the law, that we're to ignore the real reason and  
16 only focus on what's in the decisional memorandum?

17 MR. GARDNER: Objection. Calls for a  
18 legal decision.

19 THE WITNESS: Your hypothetical is  
20 premised on the false conclusion that there is  
21 some illegal rationale that would be provided and  
22 be exposed and be referenced. There is none.

1 It's committed to his discretion to add a  
2 question, as long as you make it through the other  
3 things, Paperwork Production Act, et cetera. So  
4 it's -- I don't understand the basis for your  
5 question. But there's -- at the base of your  
6 question is this hypothetical that there's some  
7 supposed illegal reason that would be -- that  
8 would nullify a perfectly valid decision. I don't  
9 agree with that assessment.

10 BY MR. GERSCH:

11 Q Mr. Comstock, I want you to listen to my  
12 question carefully, because there was no reference  
13 to any illegal rationale, and I'm going to put it  
14 to you again and there will be no reference to an  
15 illegal rationale. And my only question -- and,  
16 by the way, I'm happy if you want to take this as  
17 a hypothetical.

18 My only question is: If the Secretary  
19 lays out a rationale in his decisional memorandum  
20 which is different than his real rationale, is it  
21 your understanding that we're supposed to ignore  
22 the real rationale and only focus on what's in the



1 decision memo?

2 MR. GARDNER: Given your introductory  
3 clause, objection. Calls for a hypothetical.  
4 Objection. Calls for a legal conclusion.

5 THE WITNESS: Again, a decision is valid  
6 if a valid reason has been spelled out, and that  
7 is what we did.

8 BY MR. GERSCH:

9 Q Could you answer my question?

10 A Again, I don't accept the premise of your  
11 question, which is that there's some other reason  
12 besides what was provided in the memo.

13 Q It's a hypothetical question, sir. The  
14 question is --

15 A I'm not going to answer a hypothetical on  
16 that basis.

17 Q I'm asking you to answer it, and you're  
18 here to answer questions, and I think I'm fairly  
19 following up on your testimony.

20 My question to you is real simple: If  
21 the Secretary lays out a rationale in his  
22 decisional memorandum and it's not his real

1 rationale, is it your understanding that what  
2 we're supposed to focus on is what's in the  
3 decisional memorandum and we're not supposed to  
4 look at the rationale?

5 MR. GARDNER: Objection. Calls for  
6 hypothetical. Objection. Calls for legal  
7 conclusion.

8 THE WITNESS: Again, we're at loggerheads  
9 here because you keep spelling out something that  
10 is -- that presupposes there is some other  
11 rationale that would be sufficient to outweigh a  
12 legitimate rationale and, therefore, must be  
13 noticed and taken care of. I mean, the government  
14 makes decisions all the time and spells out a  
15 rationale. Do some of decision-makers have,  
16 perhaps, other reasons, maybe, but it's not  
17 relevant to the legal analysis.

18 Q We shouldn't know what Secretary --  
19 withdrawn.

20 We shouldn't know what the real rationale  
21 is; is that testimony?

22 A I --

1 MR. GARDNER: Objection. Calls for a  
2 legal conclusion.

3 THE WITNESS: Again, I have no reason to  
4 believe that the rationale is anything other than  
5 what's in the memo.

6 BY MR. GERSCH:

7 Q Well, sir, actually, you testified  
8 previously that the Secretary had a rationale for  
9 asking this question, which he didn't reveal to  
10 you and had nothing to do with the  
11 Department of Justice's request.

12 A I disagree with that statement.

13 Q Let's try this one other way. You don't  
14 disagree with the proposition that a  
15 decision-maker could have a rationale that is  
16 different than what he chooses to spell out in his  
17 decisional memorandum, right?

18 MR. GARDNER: Objection. Calls for  
19 hypothetical.

20 THE WITNESS: Again, I don't know -- I  
21 don't -- it's impossible to answer that question,  
22 because you -- I'm not sure where you're going

1 with it.

2 BY MR. GERSCH:

3 Q I'm not asking you to know where I'm  
4 going with it. I'm asking you to answer the  
5 question. I'll put it to you again.

6 You don't disagree with the proposition  
7 that it's possible for the decision-maker to have  
8 one rationale which he puts in the decisional  
9 memorandum and a completely different rationale  
10 which is the real reason he wants the decision  
11 done?

12 MR. GARDNER: Objection. Calls for a  
13 hypothetical.

14 THE WITNESS: Again, in the context we're  
15 dealing with, I don't agree with that statement.

16 BY MR. GERSCH:

17 Q It's not possible for that to happen,  
18 it's not possible for the decision-maker to put  
19 one rationale in the decisional memo and have a  
20 completely different rationale for why he wants  
21 the decision?

22 MR. GARDNER: Objection. Calls for a

1 hypothetical.

2 THE WITNESS: In my experience with the  
3 federal government service across 30 years, both  
4 Democrat and Republican, I'm not aware of  
5 decision-makers who would do such a thing.

6 BY MR. GERSCH:

7 Q This would never happen, in your view,  
8 right?

9 A I'm not going to use the word never.  
10 Clearly, in the course of human history, things  
11 like that do happen. That's not been my  
12 experience that it generally is the case.

13 Q That's fine. Put aside your experience.  
14 I'm just asking you conceptually, you don't have  
15 difficulty understanding that a decision-maker  
16 could say I'm doing this for one reason without  
17 revealing that he is actually doing it for a  
18 different reason. You understand that concept,  
19 right?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Yeah. It's a hypothetical

1 to which the answer is always going to be yes. So  
2 to the extent that makes you happy, sure.

3 BY MR. GERSCH:

4 Q Okay. So you do understand that concept.  
5 So when that occurs, when it is the case that the  
6 decision-maker puts forth a stated rationale,  
7 which is, in fact, not his real rationale, is it  
8 your understanding that we should pay no attention  
9 to his real rationale and focus only on his stated  
10 rationale?

11 MR. GARDNER: Objection. Calls for  
12 hypothetical objection. Calls for a legal  
13 conclusion.

14 THE WITNESS: I'm not going to answer  
15 that question.

16 MR. GARDNER: Would now be a good time  
17 for a break? We've been going about an hour.

18 VIDEOGRAPHER: This concludes Media Unit  
19 Number 5. The time on the video is 3:11 p.m. We  
20 are off to record.

21 (Off the record.)

22 VIDEOGRAPHER: This begins Media Unit

1 Number 6. The time on the video is 3:37 p.m. We  
2 are on the record.

3 (Plaintiffs' Exhibit 28, Memo, was  
4 marked.)

5 BY MR. GERSCH:

6 Q Mr. Comstock, we're back on the record.

7 After the Department of Justice made  
8 their formal request for the addition of a  
9 citizenship question in December of 2017, you  
10 understand that the Census Bureau did some  
11 analysis with respect to that request, right?

12 A Correct.

13 Q All right. And one of the things that  
14 the Census Bureau produced is a document that's  
15 been marked Exhibit 28.

16 A Okay.

17 Q Is that fair to say?

18 A It appears to be a memo from John Abowd  
19 to the Secretary, so will -- oh, it's marked  
20 draft, so --

21 Q Dated January 19, 2018, as you say, from  
22 John Abowd, Chief Scientist at the Census Bureau,

1 to Secretary Ross through Karen Dunn Kelley.

2 You've seen this before, haven't you?

3 A I don't know that I've seen this  
4 particular draft. It's marked draft, so I don't  
5 know that this document ever made it up to the  
6 Secretary's office.

7 Q Did you see a form of this document,  
8 whether it was this one or not?

9 A I saw some form of this document, yes.

10 Q I want to direct your attention to the  
11 one, two, three -- third full paragraph, last  
12 sentence, and in it Mr. Abowd addresses  
13 Alternative B -- and, by the way, you understand  
14 Alternative B is adding a citizenship question to  
15 the census, right?

16 A That appears to be what the memo says,  
17 yeah.

18 Q So what Mr. Abowd reports is  
19 Alternative B -- that is adding a citizenship  
20 question -- is, quote, very costly, harms the  
21 quality of the census count, and would use  
22 substantially-less active citizenship status data



1 that are available from administrative sources.

2 You knew that that is what the

3 Census Bureau had concluded, right?

4 A Well, again, that's a -- this is a draft  
5 pre-decisional memo. So I'm not sure if this was  
6 the final document that was sent to us or not.

7 Q I'll represent to you that this  
8 is -- that the record made in this case so far is  
9 that this is the last draft produced. Does that  
10 help you --

11 A Is that -- okay.

12 Q I'm happy if you want to consult with  
13 your counsel.

14 MR. GARDNER: If you -- you can answer  
15 the question, yes.

16 THE WITNESS: Sure. Assuming this is the  
17 final version, then that's what the document says,  
18 yes.

19 BY MR. GERSCH:

20 Q That's not my question. You came to  
21 understand, isn't that right, that the view of the  
22 Census Bureau was that asking the citizenship

1 question is very costly, harms the quality of the  
2 census count and would use substantially-less  
3 citizenship status than are available from  
4 administrative sources?

5 A I would agree that that's the summary  
6 statement here. That it overstates the case they  
7 made further in the document. But that is not an  
8 accurate representation of what's actually  
9 reflected in the document.

10 Q I want to make sure I understand your  
11 testimony. You're saying you disagree with their  
12 conclusion?

13 A I disagree with that characterization as  
14 being the final conclusion of the Census Bureau,  
15 yes.

16 Q Ah. Okay. So you think that what I just  
17 read to you doesn't fairly reflect the view of the  
18 Census Bureau; is that right?

19 A I think that reflects the view of  
20 Dr. Abowd and that it's very imprecisely stated.  
21 If you read the rest of the memo, it provides more  
22 detail, and so I would not agree with the

1 statement, because it's not backed up in the  
2 document that it would be very costly. That's a  
3 relative term. And that it would use  
4 substantially-less accurate, I disagree with those  
5 statements.

6 Q Yeah. I understand, and I stipulate that  
7 you disagree with them. My question is a little  
8 different. I'm asking if you understand this is  
9 the position of the Census Bureau, whether you  
10 agree with it or not, and I stipulate that you  
11 don't.

12 A And just, again, I'm being very clear  
13 that this sentence taken out of context, I would  
14 say is not the position of the Census Bureau. The  
15 position of the Census Bureau is reflected in this  
16 full memo, which provides greater detail, which is  
17 not, I would say, accurately characterized in this  
18 summary statement at the front.

19 Q Did you ever meet with the folks at the  
20 Census Bureau about this analysis?

21 A Yes, we did.

22 Q Okay. When did you do that?

1           A    I couldn't tell you the exact date.

2           Q    Who did you meet with?

3           A    Dr. Abowd, Dr. Jarmin.   It was a large  
4   meeting.

5           Q    And Dr. Abowd and Dr. Jarmin, they stood  
6   by this analysis, right, the analysis in  
7   Exhibit 28?

8           A    I'd say that, yeah, they stood by the  
9   entire analysis, not necessarily that statement.

10          Q    And the entire analysis includes the  
11   statement that I read to you, right?

12          A    Again, you're -- I think you're taking a  
13   single statement out of context.

14          Q    My question is a little different.   I'm  
15   saying when you said, they stood by the entire  
16   analysis, that includes the statement that I read  
17   you?

18          A    And, again, I will say that I think  
19   you're trying to get me to say that particular  
20   statement represents the view of the  
21   Census Bureau, and that is not my understanding.

22          Q    Okay.   When you say it's not your

1 understanding, at no point did Dr. Jarmin or  
2 Dr. Abowd say, no, we don't believe that  
3 Alternative B is very costly, harms the quality of  
4 the census count and would use substantially-less  
5 accurate citizenship status data that are  
6 available from administration sources; isn't that  
7 right? They never took it back?

8 A We never asked them to take it back.

9 Q And they never did?

10 A I don't know if they took it back or not.

11 Q In your presence, sir.

12 A Again, they were never asked, to my  
13 knowledge, to take that statement back, so there  
14 would be no reason for them to take it back.

15 Q And they didn't take it back, did they?

16 A I don't know whether they took it back.

17 Q In your presence, they didn't take it  
18 back?

19 A Again, I look at their entire memo, not  
20 that statement.

21 Q I'm not asking that question. They  
22 didn't take this statement back that I just read

1 to you three times?

2 A Again, my point is, they were never asked  
3 to take it back, so there would be no reason for  
4 them to take it back.

5 Q I just want there to be no  
6 misunderstanding, Mr. Abowd [sic], if at trial  
7 you're going to say they took it back, I want to  
8 hear that right now.

9 MR. GARDNER: He's not Mr. Abowd.

10 BY MR. GERSCH:

11 Q I'm sorry, Mr. Comstock. It's late in  
12 the day.

13 Mr. Comstock, if you're going to say at  
14 trial that Dr. Abowd or Dr. Jarmin took this  
15 statement back, I want to hear that right now.  
16 Can we agree on that, that you'll tell me right  
17 now?

18 A I will agree -- I will agree that I would  
19 say that is not representative of the data that  
20 was presented to us in the course of extensive  
21 discussions. That that statement is an early  
22 statement that mischaracterizes the final

1 conclusions that we understood.

2 Q When you say earlier, it's the statement  
3 as of the January 19th memo, you don't disagree  
4 with that?

5 A Again, I'm not contesting they provided  
6 this investigation.

7 Q Focus on timing. You said this was an  
8 early statement and you don't think it was  
9 reflective of their final conclusions.

10 My question is: You're not saying it  
11 doesn't reflect their position as of January 19th,  
12 are you?

13 A I am saying, again, that I think you're  
14 taking a single statement out of context and  
15 trying to represent it has the position of the  
16 Bureau as conclusive, and I'm saying I disagree  
17 with that statement.

18 Q Let me show you -- let's mark this as  
19 Exhibit 29.

20 (Plaintiffs' Exhibit 29, Memo, was  
21 marked.)

22 BY MR. GERSCH:

1 Q You see what's been marked as Comstock  
2 Exhibit 29, it is a March 1, 2018 memo from  
3 Dr. Abowd for Secretary Ross, Bates stamp first  
4 Page 001308.

5 Do you have that in front of you?

6 A I do.

7 Q Have you seen this document before?

8 A I believe I've seen this document.

9 Q Okay. And this document relates to an  
10 Alternative D, right?

11 A Correct. But I'll note, again, it's  
12 marked draft, and I'm just mystified as to why we  
13 keep getting draft documents as opposed to finals.  
14 Certainly draft documents don't normally come to  
15 us.

16 MR. WALSH: Counsel, would it be possible  
17 to hand out --

18 MR. GERSCH: Oh, I'm sorry.

19 MR. WALSH: Thanks.

20 BY MR. GERSCH:

21 Q This is about Alternative D; is that  
22 right?



1           A    That's correct.   But I'm still asking a  
2   question, why am I getting a draft version of this  
3   instead of a final?

4           Q    I don't get to testify.   All I can do is  
5   ask the questions.

6                   And Alternative D was the idea of  
7   Secretary Ross, that perhaps you could combine  
8   Alternative B, which is asking the citizenship  
9   question of every household in the decennial  
10   census, and Alternative C, which was don't ask the  
11   question but use administration data to figure out  
12   citizenship status, correct?

13          A    Correct.

14          Q    And at the back of this memo, the last  
15   sentence says, "In sum, Alternative D would result  
16   in poorer quality citizenship data than  
17   Alternative C.   It would still have all the  
18   negative cost and quality implications of  
19   Alternative B outlined in the draft January 19th  
20   memo to the Department of Commerce."

21                   You saw this at the time, right?

22          A    Again, I can't say that this was the

1 document I saw, because I did not see something  
2 marked draft pre-decisional V10.

3 Q You think you saw a version of it that  
4 didn't have draft on it?

5 A I have no idea. But we don't typically  
6 see documents that say draft.

7 Q I'll represent that we've never seen a  
8 version of either of these documents that aren't  
9 marked draft. If there is one -- if there are  
10 versions, I would like them right now.

11 MR. GARDNER: I represent we've produced  
12 what we have.

13 BY MR. GERSCH:

14 Q Regardless of the format, you became  
15 acquainted with the views of Census that  
16 Alternative B would result in poorer quality  
17 citizenship data than Alternative C and still have  
18 all the cost and quality implications of  
19 Alternative B outlined in the draft January 19th  
20 memo to the Department of Commerce; you became  
21 acquainted with that conclusion of theirs, right?

22 A I did.

1 Q Okay. By the way, you'll notice it  
2 says -- this refers to the January 19th memo as  
3 being a draft.

4 A Okay. Like I said --

5 Q Do you see that?

6 A I see it. That it says that, yes.  
7 Perhaps that is what they provided to us. I don't  
8 know. We produced whatever is in the record, so  
9 if this is what's in the record -- as long as I'm  
10 being given the final version, then okay.

11 Q All right. You're not saying that the  
12 Census Bureau took back the conclusion reflected  
13 in this last paragraph that I've read you from  
14 Exhibit 29, are you?

15 A Again, I think there was iterative  
16 exchange in which the conclusions of the  
17 Census Bureau to staff and some of their  
18 assertions did not hold up under  
19 cross-examination.

20 Q Whether you think they held up or not, my  
21 question to you is: Did the Census Bureau ever  
22 take back the conclusion that's in the last

1 paragraph of this March 1 memo?

2 A You'd have to ask them.

3 Q In your presence, did they say any such  
4 thing?

5 A I didn't ask them to take it back.

6 Q I'm not asking whether you asked them.  
7 I'm asking -- withdrawn.

8 There were other people in the meeting  
9 besides you, right?

10 A There were a series of meetings, so --

11 Q How many meetings did you have about this  
12 memo, this March 1 memo?

13 A I couldn't tell you.

14 Q About?

15 A Might have met once or twice. I really  
16 couldn't tell you.

17 Q And who did you remember being there  
18 besides Dr. Abowd and Dr. Jarmin?

19 A Again, I don't know if it was  
20 specifically on this memo or this presentation or  
21 whether they sent it to us. There were multiple  
22 meetings on the question. Who was at each

1 meeting, I couldn't tell you.

2 Q I think it would be fair to say there  
3 were multiple meetings about Census Bureau's  
4 analysis of the citizenship question, right?

5 A Yes.

6 Q Okay. And what's your best recollection  
7 of how many meetings there were?

8 A I don't know. Two or three.

9 Q And if this memo is dated March 1 and the  
10 decisional memo is dated March 26th. What's your  
11 best recollection about when the last -- the last  
12 meeting was, the last of these two or three  
13 meetings?

14 A Probably somewhere in the vicinity of  
15 March 20th.

16 Q Okay. And my question simply to you is,  
17 sir: Did the Census Bureau people ever say we're  
18 taking it back, you've convinced us, we don't  
19 agree with the conclusion we put forth in the last  
20 paragraph?

21 A No.

22 Q And did you ever have -- withdrawn.

1 Did you have a meeting about the wording  
2 of the March 26th memo with the Census Bureau?

3 A I don't believe so.

4 Q You didn't have a meeting with Dr. Abowd  
5 with Secretary Ross there on the morning of the  
6 26th or thereabouts?

7 A No, not to my recollection. But it's  
8 entirely possible.

9 Q So it's your -- and all I can ask for is  
10 your best recollection.

11 It's your best recollection that you  
12 never had a meeting with the Census Bureau about  
13 the wording of the March 26 decisional memo?

14 A Not that I recall, no.

15 Q Did you ever have any analysis of the  
16 citizenship question prepared by experts other  
17 than the folks at the Census Bureau?

18 A Not that I know of, no.

19 Q Did you ever get any input from somebody  
20 with technical expertise with respect to the  
21 Census Bureau's analysis of the citizenship  
22 question who was not from the Census Bureau?

1 A No.

2 Q Did anyone review the Census Bureau's  
3 analysis of what was wrong with the citizenship  
4 question who was not a lawyer?

5 A The Secretary.

6 Q Other than the Secretary?

7 A Karen Dunn Kelley.

8 Q Other than the Secretary and Karen Dunn  
9 Kelley?

10 A Obviously, Dr. Jarmin, Dr. Abowd.

11 Q I'm talking about people outside the  
12 Census Bureau.

13 A Census Bureau.

14 Well, let's see -- well, Wendy Teramoto  
15 might have. But, no, primarily would have been  
16 Office of General Counsel doing the review.

17 Q And you?

18 A And me.

19 Q And you're a lawyer?

20 A Yes, I am a lawyer.

21 Q All right. Let's mark the decisional  
22 memorandum as Exhibit 30.

1           Q    -- those are empirical analyses, right,  
2   they count?

3           MR. GARDNER:  Objection.  Form.

4           THE WITNESS:  You'd have to ask the  
5   Census Bureau how they do their analysis.

6   BY MR. GERSCH:

7           Q    Right.  But you understand what empirical  
8   means, right?

9           A    I understand the use of the term, but I  
10   don't know if all of their analyses are based on  
11   empirical or some other method.

12          Q    Certainly, some of their analyses are  
13   empirical, right?

14          A    Sure.  And some are sampling and some of  
15   them are imputation.  They use a variety of  
16   statistical methods.

17          Q    Just a few more questions.  Now, turn to  
18   Exhibit 30 if you would and turn to Page 7.

19          A    Yeah.

20          Q    Last paragraph, first sentence reads,  
21   "The Department of Commerce is not able to  
22   determine definitively how inclusion of a



1 citizenship question on the decennial census will  
2 impact responsiveness."

3 You saw that, right?

4 A Yep.

5 Q It says the Department of Commerce is not  
6 able to determine definitively. What does that  
7 mean, determine definitively?

8 A What it says. In other words, the  
9 evidence presented to us was not determinative,  
10 and it was not definitive that there would be a  
11 drop in response rate. There was a widely-held  
12 belief that there would be a drop in response, but  
13 many of those same people that they were not  
14 answering the citizenship question, were already  
15 not answering the census because of distrust of  
16 government, because of whatever the other reasons  
17 may be.

18 So they could not identify with any  
19 specificity that the addition of a citizenship  
20 question would, in fact, cause a decrease in  
21 response rate. They estimated there could be a  
22 decrease of a certain number of households, which

1 was less than half a percent. And based on the  
2 size and volume of the exercise we were  
3 undertaking, that is not sufficient to say it's an  
4 insurmountable obstacle.

5 MR. GERSCH: I'll move to strike it as  
6 nonresponsive.

7 BY MR. GERSCH:

8 Q My question --

9 A It was responsive.

10 Q What do you mean by definitively?

11 MR. GARDNER: Objection. Asked and  
12 answered.

13 THE WITNESS: What I mean by definitive  
14 is they did not provide evidence that you could  
15 draw a straight line and say if you do this, this  
16 will happen. They speculated it, and they drew  
17 some conclusions based on other information, but  
18 logical people can look at that information and  
19 say, yes, but that's not a necessary conclusion  
20 that, in fact, as was pointed out, the same  
21 hard-to-count populations who were already not  
22 responding to the census were likely the very same

1 ones that might not answer the census.

2 And just to your point, just to  
3 illustrate this, we do know from the ACS that  
4 70 percent of the people who are presented with  
5 the citizenship question answer it correctly, who  
6 are, in fact, noncitizens and 30 percent don't.  
7 So it doesn't necessarily mean that you add a  
8 citizenship question and people refuse to answer.  
9 We have a population that does answer.

10 I know that's not the answer you wanted.)

11 BY MR. GERSCH:

12 Q Mr. Comstock, we're missing each other,  
13 so let me try it a little differently.

14 I'm not asking you whether you didn't  
15 think the Census Bureau's answer was definitive.  
16 I'm asking what is -- what would be -- let's try  
17 it this way, what would you consider to be  
18 definitive evidence?

19 A If they had evidence that showed that the  
20 addition of a citizenship question would cause a  
21 number of people that otherwise would have  
22 responded to the census to not respond.

1 Q And what would they need to show you  
2 that?

3 A They would problem have to put the  
4 question on the decennial census and compare it to  
5 prior decennial censuses and eliminate for the  
6 errors. And, unfortunately, they don't have that  
7 data from when they were asking that question, so  
8 they couldn't make the comparisons.

9 Q Well, they could have done it on a test  
10 basis for the 2020 census, right?

11 A They already asked the ACS to 43 million  
12 households. So we'd asked and answered that  
13 question already.

14 Q My question --

15 A It's been well tested.

16 Q My question is: They could do it on the  
17 2020 census on a trial basis, right?

18 A And that's, basically, what the Secretary  
19 has determined to do.

20 Q No. The Secretary has not decided to do  
21 it on a trial basis. He wants everyone asked,  
22 right?

1           A     Well, that would be a trial basis.

2           Q     Let me do it differently.   You could do  
3     it on the 2020 census as a test where it's being  
4     asked as a sample of the people, right?

5           A     That would not give you -- actually, that  
6     would give you no more information than you get  
7     from the ACS, so we already have that information.

8           Q     You think asking the question on the  
9     decennial census is the same thing as asking on  
10    the ACS?

11          A     No, I don't.

12          Q     Okay.   How about a randomized control  
13    study of some kind, randomized controlled testing?

14          A     We already have that.

15          Q     You think you already have that?

16          A     Sure, through the ACS.

17          Q     Okay.   Was a proposal to do a randomized  
18    controlled test in May of this year from the  
19    Census Bureau?

20               MR. GARDNER:   Objection.   Lacks  
21    foundation.

22               THE WITNESS:   Not that I'm aware of.

1 Q The initial impetus for putting the  
2 citizenship question on the 2020 census was not  
3 DOJ's idea; is that correct?

4 A That's correct.

5 Q It was Secretary Ross's idea, I think  
6 you've testified to that, correct?

7 A He was the one who asked me to  
8 investigate it, yes.

9 Q He told you sometime shortly after he was  
10 confirmed that he wanted the question on the 2020  
11 census, correct?

12 A He asked me to explore putting it on,  
13 yes.

14 Q Well, he actually said he requests the  
15 question be put on the census, correct?

16 A That was the way he phrased it, yes.

17 Q You said you would make that happen,  
18 correct?

19 A I said I would do my best.

20 Q And you would get the citizenship  
21 question in place, I think was -- were your words?

22 A I said I would work to get that in place.

1           A     You'd have to ask the Justice Department  
2     redactors.

3           Q     Do you -- without saying what is said  
4     there, do you know what you wrote there that's  
5     been blocked out?

6           A     I don't recall.

7           Q     You did not ask her for legal advice, did  
8     you?

9           A     No.

10          Q     Do you have any reason to believe there  
11     is some privileged information in what's been  
12     blocked out?

13               MR. GARDNER:  Objection.  Calls for a  
14     legal conclusion.

15               MR. ROSENBERG:  He's always the client,  
16     and the client holds the privilege.

17               THE WITNESS:  I don't know what it says,  
18     so I trust the folks who redacted it believe  
19     there's a conclusion of some kind that is relevant  
20     to the investigation.

21     BY MR. ROSENBERG:

22           Q     Anyone at Commerce who was more involved

1 in the citizenship question other than you during  
2 the period from the time you came to Commerce  
3 until the citizenship question issue was resolved?

4 A Probably not, no.

5 Q Let me -- take a look at C5 that's been  
6 marked, which is the supplemental memorandum.

7 A Uh-huh. I've got it somewhere. It's a  
8 supplemental memorandum.

9 Q It's dated June 21 --

10 MR. GARDNER: You want to look at my  
11 copy?

12 THE WITNESS: Okay. All right. Go  
13 ahead.

14 BY MR. ROSENBERG:

15 Q When did you first hear that this  
16 document was going to be created?

17 A Sometime shortly before June 21st.

18 Q Do you recall approximately how many days  
19 before June 21st?

20 A I don't.

21 Q But before you got a copy of the  
22 document; is that correct?



1 Q Are you going to follow counsel's advice?

2 A I'll follow my counsel's advice, yes.

3 Q By the way -- by the way, I think you  
4 testified that you made some edits to C5, the June  
5 21st supplemental memorandum; is that correct?

6 A I think I may have suggested a wording  
7 change or two.

8 Q Do you know what wording change or two  
9 you made?

10 A I have no recollection of that.

11 Q Did you maintain the original draft of  
12 the June 21st memorandum?

13 A I imagine I made it -- my edits in  
14 electronic form, but that would be, probably,  
15 privileged, under the administrative record.

16 Q Let's turn to C30, which is the  
17 March 26th memo. Now, is it stated anywhere in  
18 this memorandum that the Secretary had begun,  
19 considering the question of adding the citizenship  
20 question to the census almost a year prior or more  
21 than a year prior to the March 26th memorandum?

22 A It wouldn't be relevant to the

1 memorandum.

2 Q So you don't think that's important  
3 information?

4 A The government has lots of processes  
5 where -- and I've been involved in lots of  
6 processes throughout the government where things  
7 have been under consideration for months, years,  
8 decades, even, prior to an administrative record,  
9 and that's not usually included in the decision.

10 The question is once you began the formal  
11 action of considering this decision and in which  
12 you're presented with a situation where you need  
13 to make a decision, you document at how you arrive  
14 at your conclusion.

15 Q It's your testimony that the formal  
16 action is when?

17 A When we received the letter from the  
18 Department of Justice. Because prior to that,  
19 this was all speculation.

20 Q Well, but prior to that, you had been  
21 directed by the Secretary of the Commerce to put  
22 the citizenship question on the census --

1 A I'd --

2 Q -- isn't that correct?

3 A I'd been directed to explore putting a  
4 citizenship question on the census.

5 Q He said he wanted it on the census,  
6 correct?

7 A That was certainly his expressed  
8 interest.

9 Q It was an expressed statement, was it  
10 not?

11 A That's the way he phrased it. But,  
12 again, he can't put something on the census  
13 without having the legal authority or process in  
14 place to do so.

15 Q You agree it would have been more  
16 accurate if the first sentence of C30 said, as you  
17 know, pursuant to my request on December 12, 2017,  
18 the Department of Justice requested that the  
19 Census Bureau reinstate a citizenship question;  
20 isn't that more accurate?

21 A I wouldn't agree that's more accurate.

22 Q Isn't that what happened?

1           A    Again, the Department of Justice decision  
2   to ask -- send a letter requesting this is a  
3   decision they made independently.   We cannot  
4   compel them to make that request.

5           Q    By the way, what does Section 2 of the  
6   Voting Act provide?

7           A    Well, my understanding of it -- and,  
8   again, it's been established that I'm not a Voting  
9   Rights Act expert -- is that there are cases in  
10   which you might have a population where as they  
11   set up a district, you have two minority  
12   populations.   If one of those minority  
13   populations, for example, Hispanics population,  
14   has a large under of undocumented people, they  
15   might appear on paper to have a majority.   When,  
16   in fact, they can never actually execute that  
17   majority because they don't have enough Citizen  
18   Voting Age Population people to carry that out.

19           Now, under the census, we already ask  
20   about age and we ask about race, so we can  
21   determine those two questions.   What you can't  
22   determine is how many people of that population

1 are, in fact, eligible to vote.

2 Now, using the ACS data, the census  
3 provides estimates that the Justice Department  
4 uses for that very purpose. We know, in fact, as  
5 a result of this analysis, in the Census Bureau's  
6 efforts to promote Alternative C, they, in fact,  
7 did an analysis of that ACS data, and lo and  
8 behold, it came back that the data that we've been  
9 providing to the Justice Department is, in fact,  
10 at a fairly significant error. It's off by a  
11 factor of about a third. And so in light of that  
12 information, you'd absolutely want to go forward  
13 with this.

14 Q But the Census Bureau, nevertheless,  
15 recommended from a standpoint of accurate and  
16 completeness and quality of the census that there  
17 should not be a citizenship question added to the  
18 census, as opposed to continuing to rely on ACS  
19 data supplemented by the administrative records?

20 A No. In the process of this memorandum,  
21 back and forth, they could not articulate a  
22 rationale to support their belief that there would

1 be this decline in this response rate. Their  
2 entire analysis relied on the assumption that  
3 there would be this decline in response rate of a  
4 certain percentage and that that would, therefore,  
5 make the data less reliable.

6 What they couldn't refute was the fact  
7 that under their proposed approach, they would  
8 have had to impute -- again, based on statistical  
9 models -- the citizenship of 25 million voting age  
10 citizens. That was not a complete and accurate  
11 picture as far as the Secretary was concerned. So  
12 the Secretary said this is why we need to look at  
13 combining the two approaches, B and C, to come up  
14 with Alternative D. Because in the absence of  
15 that, we don't have good enough data on which to  
16 build the formula to impute those people that we  
17 would have to because we don't have answers on  
18 what their citizenship is. So that's the  
19 rationale that's laid out in this memo, and as far  
20 as I know, that's been the rationale that's been  
21 the Secretary's all along.

22 Q But not the rationale that was accepted

1 by the Census Bureau, which nevertheless, rejected  
2 as -- from a technical perspective, the  
3 Secretary's rationale; isn't that correct?

4 A I disagree that they rejected it from a  
5 technical perspective. They made some assumptions  
6 in making their recommendation -- and that's  
7 exactly what it is, it's a recommendation -- that  
8 this would be the case.

9 Q Let me turn your attention to C30,  
10 Page 001314, which is Page 2 of the March 26th  
11 memo. And turning your attention to the Option A,  
12 the third line in the sentence that says,  
13 "Additionally, the block group levels CVAP data  
14 currently obtained through the ACS has associated  
15 margins of error" --

16 A Correct.

17 Q -- "because the ACS is extrapolated based  
18 on the sample servers of the population."

19 A That's correct.

20 Q Do you know what the margins of errors  
21 are that are referred to in this sentence?

22 A I think you go on and see, you'll see it

1 described later in the same memo, which is that  
2 they have an error of approximately 30 percent, 28  
3 to 34, I believe, is the range.

4 Yeah. If you look on Page 4,  
5 "Census Bureau analysis showed that between 28 and  
6 34 percent of citizenship self-responses for  
7 persons with administrative records show are  
8 noncitizen were inaccurate. In other words, when  
9 noncitizens respond to long form or ACS questions  
10 on citizenship, they inaccurately mark citizen  
11 about 30 percent of the time. However, the  
12 Census Bureau is still evolving its use of  
13 administrative records. The Bureau does not have"  
14 --

15 (Thereupon, the court reporter  
16 clarified.)

17 THE WITNESS: This is in the -- under  
18 Option C of Page 4.

19 MR. GARDNER: You're going to have to  
20 slow down for the court reporter.

21 THE WITNESS: "So they inaccurately mark  
22 noncitizen about 30 percent of the time. However,



1 the Census Bureau is still evolving its use of  
2 administrative records, and the Bureau does not  
3 yet have a complete administrative record set for  
4 the entire population. Thus, using administrative  
5 records alone would provide DOJ data with CVAP  
6 data that was not a" -- "that would provide an  
7 incomplete picture."

8 BY MR. ROSENBERG:

9 Q And that's your understanding of what  
10 margins of error means as used on Page 01314?

11 A Well, yes. They're referring to that --  
12 that margin of error they're referring to is the  
13 28 to 34 percent they were off.

14 Q Do you know whether the data that would  
15 be provided to DOJ if a citizenship question were  
16 added to the 2020 census would also have margins  
17 of error associated with that data?

18 A It would almost certainly have some small  
19 margin of error, yes.

20 Q When you say a small margin of error, can  
21 you quantify that?

22 A Well, yeah. I think if you look at the

1 decision memo, it spells out that by providing the  
2 question on the census, you'll give 100 percent of  
3 the population to answer that question. For  
4 90 percent of the people that are citizens, that  
5 is not a problem. For the remaining 10 percent,  
6 approximately, again, based on -- again, on the  
7 ACS error rate, you can expect that approximately  
8 70 percent of those people will also answer that  
9 data correctly. So you're looking at, basically,  
10 what is the situation with the remaining  
11 30 percent? And based of the data we get from the  
12 actual responses, comparing that with the  
13 administrative records, which we're also working  
14 to improve, so that that 88.6 from the 2010 census  
15 is expected to go up, should be closer to 90 to  
16 95, we'll be able to narrow to down to about a 5  
17 percent of the population that we'll have to  
18 impute. It's a much smaller number than the  
19 number that's being --

20 Q And that's your understanding of how the  
21 phrase margins of error is used in the Secretary's  
22 memo?

1           A    Well, I'm not sure -- you're focused on  
2   the words margins of error.

3           Q    Right. All of my questions had to do  
4   with the phrase margins of error.

5           A    And you're saying --

6           Q    I'm just trying to get your understanding  
7   of the phrase.

8           A    No. I was focusing on the ACS. I mean,  
9   you're isolating the term margins of error.

10          Q    Yes.

11          A    When you do sampling or other things,  
12   there is a margin of error associated with that,  
13   and that margin of error can be larger or it can  
14   be smaller. And so they would provide, typically,  
15   a confidence interval connected with their data,  
16   and, again, depending on how the survey is  
17   conducted, it could be large or small.

18          Q    Well, that sounds a little bit different  
19   than what you testified to earlier, when I asked  
20   you about the phrase margins of error as used in  
21   the sentence I read to you from C003134.

22          A    You'll have to remind me what the

1 sentence is again --

2 Q Sure. "The Census was additionally" --

3 A -- because I focused on the ACS.

4 Q -- "block group level CVAP data currently  
5 obtained through the ACS has associated margins of  
6 error because the ACS is extrapolated, based on  
7 sample surveys of the population."

8 A And I believe that reference in the  
9 context of this memo may be scientifically  
10 incorrect, but it's referring to the fact that  
11 there's this error in the data of roughly  
12 30 percent. So this was not drafted by, quote,  
13 scientists. So we may have inaccurately used the  
14 term margin of error. But what the Secretary was  
15 referring to was the fact that we had now learned  
16 that the ACS data was fairly significantly  
17 inaccurate.

18 Q Do you know whether the Census Bureau's  
19 use of margins of error, quote, end quote, is the  
20 same as you have just described?

21 A I have no idea. I mean, I would guess  
22 that in other context, that the Census Bureau uses

1 the term margin of error differently. I'm saying  
2 in the context of this memo, I think the reference  
3 of margin of error is referring to that margin of  
4 inaccurate information in the ACS. That is what  
5 the Secretary was focused on in making his  
6 decision.

7 Q I'd like to turn your attention to  
8 001315, Page 3, the second full paragraph that  
9 begins "the Census Bureau."

10 A Uh-huh.

11 Q And the Census -- I'm sorry -- the  
12 sentence that reads, "However, neither the  
13 Census Bureau, nor the concerned stakeholders  
14 could document that the response rate would, in  
15 fact, decline materially."

16 Do you see that?

17 A I see that.

18 Q Can you tell me what you understand the  
19 word materially to mean?

20 A Yes. In that context, it's, basically,  
21 saying they could not, as I explained earlier,  
22 demonstrate that the decline because of the

1 addition of a citizenship question would be any  
2 greater than the decline that we already  
3 anticipated we would face because of the current  
4 political climate and people's concerns about  
5 government.

6 And, frankly, the folks bringing this  
7 lawsuit are contributing to that. We already  
8 anticipated this was going to be -- this census  
9 was going to be more difficult than other  
10 censuses, and that was a lot of the reasons behind  
11 some of the changes that were made in the  
12 lifecycle cost estimate. So we anticipated there  
13 were going to be hard-to-count populations, and  
14 many -- many of the same hard-to-count populations  
15 would have been disinclined to answer the census  
16 with or without a citizenship question.

17 Q When you say that the -- when you talk  
18 about the material decline, are you talking about  
19 the decline overall or are you talking about a  
20 differential decline depending on what demographic  
21 group is being discussed?

22 A If the data had shown conclusively that

1 the addition of a citizenship question would cause  
2 a material -- in other words, significant and  
3 major decline in any particular group, I'm sure  
4 the Secretary would have considered that quite  
5 carefully.

6 Q When the Secretary used the word material  
7 or phrase material decline, was he referring to  
8 any decline of any demographic group or was he  
9 referring to a decline across the board?

10 A Again, based on the subject of the  
11 discussion here, would there be a significant  
12 increase in the number of nonresponse follow-ups  
13 that we had to go do because people failed to  
14 respond? The data that was being presented did  
15 not isolate the citizenship question as being a  
16 material source of potential decline. There were  
17 a lot -- there was a lot of speculation that  
18 would, there was a lot of assertions it would.  
19 And upon review and analysis, it appears that many  
20 of the same populations that were already going to  
21 be difficult to count for lots of other reasons  
22 would be the same people who might be disinclined

1 because of citizenship. So you cannot say that  
2 adding citizen is going to materially increase the  
3 nonresponse follow-up rate.

4 Q Can you quantify what you mean by a  
5 material decline?

6 A Well, I mean, the Census Bureau,  
7 basically, under their best analysis, was saying  
8 that there might be a decline that would cause an  
9 increase of \$27 and a half million. In a  
10 \$15.6 billion budget, that is -- I mean, that's so  
11 far within the margin of error it's not even a  
12 fact.

13 Q Well --

14 A We could have a bad snow day that would  
15 cause bigger damage than that.

16 Q Was -- do you consider an undercount  
17 resulting from the addition of any question to the  
18 census of a quarter of a percentage point in a  
19 specific population to be material?

20 A I have no reason to believe the addition  
21 of a citizenship question would cause such a  
22 thing.



1 response of a demographic group a material decline  
2 in your estimation?

3 A Again, without context, I can't give you  
4 an answer. If that demographic group is composed  
5 of 100 people, it may not be --

6 Q What if the demographic is Hispanics?

7 A I don't know that -- well, again, no.  
8 That's a weighing question that the decision-maker  
9 is free to make.

10 Q Again, you're going back to weighing.  
11 I'm talking about the phrase declining material --  
12 materially. I'm not weighing it yet. You can  
13 weigh it later if you want. I'm just talking  
14 about one side of the balance that I think you're  
15 suggesting is being applied.

16 Is a quarter decline in response to the  
17 census among Hispanics a material decline in your  
18 estimation?

19 A The -- the -- I think the short answer  
20 is, the decline identified by -- the potential  
21 decline identified by the Census Bureau was not  
22 material enough to outweigh the benefits the

1 Secretary saw in adding the question.

2 Q It still doesn't answer my question.

3 A You're asking me to answer in a  
4 hypothetical, which I'm not going to do because I  
5 don't have the number of Hispanic voters. I don't  
6 know what 4 percent decline would represent. I --  
7 it's impossible for me to evaluate. I've never  
8 looked at the population numbers of Hispanics  
9 versus any other.

10 Q Well, you know that the number of  
11 Hispanics in American is in the tens of millions;  
12 is that correct?

13 A I honestly haven't really given it much  
14 thought.

15 Q Do you know if it's more than a million?

16 A I think it safe to say it's more than a  
17 million.

18 Q More than five million?

19 A I think so.

20 Q More than ten million?

21 A Let's see. If the population of the  
22 United States is 360 million, and I believe

1 Hispanic are somewhere in the 10, 12, 15 percent  
2 range, they're, obviously, well above that.  
3 They're like -- I don't know, like -- 79 million.

4 Q Of how many did you say?

5 A 70 -- I can't do the math that quickly,  
6 so let's say, whatever, 70 million. I don't know.

7 Q Let's use 70 million. So if there  
8 were -- let's make it easier, for my head. Let's  
9 say there was a 1 percent decline in response rate  
10 among Hispanics due to the inclusion of a question  
11 on the census, would you consider that a material  
12 decline?

13 A I would consider that a factor that you  
14 need to take into account.

15 Q And if it were a 3 percent decline, would  
16 you consider that even more of a factor?

17 A Three percent is greater than 1 percent,  
18 so, presumably, it would be greater. But, again,  
19 it depends on, again, what I'm deciding against.

20 Q Would you consider that material?

21 A That depends on the context.

22 Q The context of adding a question to the

1 census resulting in a 3 percent decline in  
2 responsiveness among Hispanics?

3 A All of the factors outlined in this memo  
4 are material. It's a question for the  
5 decision-maker to decide which are -- which to  
6 give greater or lesser weight to.

7 Q But the phrase here was material  
8 decline --

9 A And, again --

10 Q -- correct?

11 A -- in the context of conducting a  
12 nationwide census, the half percent change in  
13 response rates for NRFU was not something we  
14 considered material because there were lots of  
15 other factors that would cause an even greater  
16 decline.

17 Q And if the response rate was shown to be  
18 greater than a half percent decline, if it was  
19 shown to be a 3 percent decline?

20 MR. GARDNER: Objection. Calls for  
21 hypothetical.

22 THE WITNESS: I understand you're trying

1 to get a certain answer, but I'm just telling you  
2 in the context of this, in the context of this  
3 memo, the half percent increase in NRFU response  
4 rate was not material.

5 BY MR. ROSENBERG:

6 Q By the way, earlier you said that 30  
7 percent of noncitizen citizens answering the ACS  
8 citizenship question responded accurately. Do you  
9 recall that?

10 A That was data provided by the Census  
11 Bureau.

12 Q Okay. What, if any, evidence is there  
13 that noncitizens would respond to a citizenship  
14 question on the 2020 census questionnaire at a  
15 more accurate rate than they currently do on the  
16 ACS?

17 A That's -- I think we assumed in doing  
18 this that they would continue at that potential  
19 rate.

20 Q At a 30 percent inaccurate rate?

21 A Which is why you have to do both  
22 administrative records and put the question on.

1 You can't do just one or the other.

2 Q But the administrative records could be  
3 used with ACS; isn't that correct?

4 A No, they couldn't.

5 Q They could not be used --

6 A Because you can't extrapolate from the  
7 ACS to the whole population.

8 Q No. That wasn't my question.

9 The administrative records could be used  
10 in conjunction with the information from ACS?

11 A Again, you don't get an accurate sampling  
12 because you're extrapolating from the ACS to the  
13 larger population, so you can't apply your  
14 administrative records across in the same way.  
15 That's why the census was proposing to just use  
16 administrative records and they were prepared,  
17 apparently, to have to impute 25 million voting  
18 age citizen citizenship records. Now, on what  
19 basis, they would do that, we weren't sure.

20 Q But both Options C and D require some  
21 imputation; isn't that correct?

22 A Potentially, to get a complete and

1 accurate count, because we don't have 100 percent  
2 matching between the administrative records and  
3 the respondents. Yes. That's correct.

4 Q Let me draw your attention to the period  
5 around January 2018. Do you recall taking part in  
6 the signing of the list of 35 questions to the  
7 Census Bureau to answer?

8 A Yes. I helped prepare that list.

9 Q Do you -- who else helped prepare that  
10 list?

11 A The Secretary, Karen Dunn Kelley,  
12 James Uthmeier, myself. There may have been  
13 others.

14 Q Were you the prime drafter?

15 A Of that particular list, I may have been  
16 the prime assembler. I was not necessarily the  
17 prime drafter of all the questions.

18 Q And what was your purpose -- what was the  
19 purpose in proposing those questions?

20 A Basically, it has -- I think it was  
21 pointed out earlier we got an analysis from the  
22 Census Bureau that seemed to have a particular

1 viewpoint, and it wasn't well supported in some  
2 cases. So those are the questions that arose  
3 after reviewing their memo.

4 Q And when you -- after the questions were  
5 formulated, whom did you send them to?

6 A I believe they were sent to the  
7 Census Bureau.

8 Q And the idea was the Census Bureau would  
9 answer the questions; is that correct?

10 A They would provide that input, yes.

11 Q And you gave them a deadline, did you  
12 not?

13 A I imagine we did, yeah.

14 Q Four days; is that correct?

15 A I don't recall.

16 Q Was it your understanding that the  
17 answers were going to be provided solely by the  
18 Census Bureau to those questions?

19 A I believe all the questions were directed  
20 to the Census Bureau, but if they were directed to  
21 somebody else, then, obviously, they would provide  
22 them.



1 Q But it was your understanding that the  
2 Census Bureau would answer them; is that correct?

3 A Again, without going back and looking at  
4 the documents and the accompanying emails, I can't  
5 tell you exactly who it was. But my understanding  
6 was, yes, they were drafted for the Census Bureau.

7 Q Did there come a time when you reviewed  
8 the answers for the questions?

9 A I imagine there was.

10 Q Well, was there?

11 A Again, I know all of you are focused on  
12 this case and everything else. This was one small  
13 fraction of the work I was doing at that time. So  
14 I'm quite certain I reviewed the answers. Exactly  
15 when, I can't tell you. But, clearly, they  
16 went -- the responses to those questions were  
17 considered in the decision memo. So I, obviously,  
18 reviewed them at some point.

19 Q Do you recall whether you reviewed those  
20 responses all at once or some kind of rolling  
21 basis?

22 A If memory serves, I believe the Census

1 responded back to some, and then provided  
2 follow-up answers to others that took more time.

3 Q Do you recall whether in connection with  
4 any of the questions the Census Bureau was asked  
5 to change their answers to any questions?

6 A I believe -- well, I believe in one case,  
7 they provided a response that indicated that there  
8 was a very set format for putting questions on the  
9 census. And we went back to them and said, how  
10 can that be? You haven't -- there hasn't been a  
11 question added to the long form? They went back  
12 and reviewed and said, yes, that's correct. This  
13 was the process we used for the ACS.

14 Q Let me -- let's have this marked as 31.

15 (Plaintiffs' Exhibit 31, Questions on  
16 draft Census memo, was marked.)

17 BY MR. ROSENBERG:

18 Q Showing you what's been marked as --

19 MR. GARDNER: Ezra, we need a --

20 MR. ROSENBERG: Can you give me one more  
21 copy?

22 I just need one. Thank you.

1 BY MR. ROSENBERG:

2 Q Showing you what's been marked as  
3 Exhibit 31, have you ever seen this document  
4 before?

5 A Again, I'd have to go back and check  
6 emails. It appears to be an incomplete response  
7 to the 35 questions.

8 Q And when you say it's an incomplete  
9 response to the 35 questions, why do you say that?

10 A Well, Question 4 is not answered.  
11 Question 9 is not answered. Question 11 is not  
12 answered. Question 15 is not answered.  
13 Question 20 is not answered. Question 27 is not  
14 answered. It appears to be -- I'm not sure that's  
15 the entire list, but some of that -- some of  
16 these -- obviously, it's not a final, because at  
17 least five questions are unanswered, so --

18 Q Let's have this marked as -- one question  
19 on that. Turning our attention to Question 31 --

20 A Okay.

21 Q -- is that the question you were  
22 referring to before as a question whose answer was

1 changed at some point?

2 A Yeah. Because this was -- as I said,  
3 when we explored the question further, it became  
4 evident that this was not, in fact, an accurate  
5 representation for the process for the decennial.

6 Q Do you know when that answer was changed?

7 A I don't.

8 Is there a date on this?

9 Q We just give you them as we got them.

10 A No. Well, no, unfortunately nobody dated  
11 this. So I don't know -- is there a -- do you  
12 have a final --

13 Q Well --

14 A -- with all the questions answered?

15 Q You're going to have to tell me.

16 A I believe there was one where they  
17 managed to answer all the questions.

18 Q Okay. Let's have this marked as the next  
19 exhibit.

20 (Plaintiffs' Exhibit 32, Memo, was  
21 marked.)

22 BY MR. ROSENBERG:

1 a general knowledge of the issue, but no specific  
2 interests. The Department of Commerce doesn't do  
3 immigration enforcement, so --

4 Q Did you believe at the time of the DOJ  
5 letter to the Census Bureau that the  
6 Attorney General was committed to the enforcement  
7 of the Voting Rights Act but that his hindrance or  
8 the hindrance of the DOJ was the availability of  
9 data?

10 MR. GARDNER: I'm sorry. Can you repeat  
11 that question?

12 MS. SENTENO: Yeah.

13 BY MS. SENTENO:

14 Q Did you believe at the time of the DOJ  
15 letter, that the Attorney General was committed to  
16 the enforcement of the Voting Rights Act but that  
17 what was holding them up was -- were data issues?

18 A Their letter communicated that they could  
19 use census block-level data, which they currently  
20 don't get for that, and if, therefore, we would  
21 add a question to the decennial census that would  
22 provide that data.

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I'm not aware of any  
3 conversations regarding adding a citizenship  
4 question for immigration enforcement.

5 BY MS. SENTENO:

6 Q How about voter fraud?

7 A No.

8 Q Congressional apportionment?

9 A No.

10 Q Redistricting?

11 A No.

12 I mean, I will note there was an earlier  
13 conversation about that Wall Street Journal  
14 article that mentioned -- that referenced  
15 apportionment. So outside of that response with  
16 the Secretary, there's never been a discussion of  
17 it.

18 Q Have you spoken to anyone at  
19 Department of Justice's voting rights section?

20 A Not to my knowledge.

21 Q So you were never referred to anyone or  
22 you never inquired from anyone, a contact within

1 the voting rights section, to discuss this  
2 request --

3 MR. GARDNER: Objection. Form.

4 BY MS. SENTENO:

5 Q -- for a citizenship question?

6 MR. GARDNER: Sorry. Objection to form.

7 THE WITNESS: No. Again, as I think we  
8 established in the earlier testimony, I was  
9 referred to Mary Blanche Hankey by someone in the  
10 Department of Commerce, by Eric Branstad, who I  
11 think got her name from a contract of his at the  
12 White House. She referred me to -- I'm already  
13 blanking on his name -- John McHenry. I did not  
14 investigate John McHenry's position in the  
15 department. I just took it on face value he would  
16 be the right person to talk to and those are the  
17 two people I spoke to at Department of Justice,  
18 so -- outside of litigation counsel, obviously.

19 BY MS. SENTENO:

20 Q You testified earlier in the memo that  
21 you drafted for the Secretary that stated that  
22 once you had been told by DHS that your request

1 would be more appropriately handled by the  
2 Department of Justice, you said that the  
3 interaction ceased; is that correct?

4 A Well --

5 Q From you?

6 A My efforts at that point to track down  
7 somebody ceased because they had run into a dead  
8 end. I mean, our initial conclusion was that  
9 Department of Justice was the right place to go.  
10 They seemed occupied on other matters, so they  
11 referred us to DHS. DHS referred us back, so now  
12 I'm back to where I started.

13 Q So once you were referred back to DOJ,  
14 you didn't ask another follow-up as to who in the  
15 voting section would be more appropriate to talk  
16 about this particular issue?

17 A Again, I was working on literally dozens  
18 of issues that consumed a lot of time. And so I  
19 had put the time into it that I could afford to  
20 put into it and had come up empty. So I reported  
21 that to my boss, and basically, said if absent  
22 some instruction from higher up, it appears that



1 the DOJ staff is not particularly interested in  
2 expending resources on this right now.

3 Q Did you or Secretary Ross consider having  
4 anyone else, any other governmental department or  
5 any other jurisdiction make a request to the  
6 Census Bureau to add a citizenship question --

7 MR. GARDNER: Objection.

8 BY MS. SENTENO:

9 Q -- other than the DOJ and DHS?

10 MR. GARDNER: Objection. Form. And  
11 objection. Foundation.

12 THE WITNESS: Again, nobody would make a  
13 request to the Census Bureau to add it because the  
14 statute commits that discretion to the Secretary,  
15 not the Census Bureau. So it's not their decision  
16 to make. It's the Secretary's decision to make.  
17 So we would not seek someone else to contact the  
18 Census Bureau about the question, no.

19 BY MS. SENTENO:

20 Q But the DOJ letter was directed to the  
21 Census Bureau requesting an addition of the  
22 question?

1           A    I did not draft that letter, so I -- but  
2   their choice of who to send the request to was  
3   dictated by the Department of Justice, not by us.

4           Q    Did you or Secretary Ross consider having  
5   anyone else make -- anyone else, other than the  
6   DOJ to DHS, to make that request to Commerce?

7           MR. GARDNER:  Objection.  Lack of  
8   foundation.

9           THE WITNESS:  No.  I think upon further  
10   analysis, we determined that the Secretary  
11   probably could determine that Commerce had a need  
12   for it, but that was not before us at the time,  
13   so --

14   BY MS. SENTENO:

15          Q    Can you explain your subsequent research?

16          A    Well, as I mentioned, the United Nations  
17   recommends that all countries ask, frankly, rather  
18   detailed questions about citizenship,  
19   naturalization, et cetera.  So it's considered  
20   good practice, good demographic information to  
21   have.  It was asked for 150-plus years without any  
22   problem.  So -- and every other major democracy

1 inquires of all their citizens on a regular basis  
2 of it. So it's -- I think there's a perception  
3 out there -- where it came from, I don't know --  
4 that somehow asking a citizenship question is a  
5 problem.

6 And I would, again, refer you back to the  
7 fact that 70 percent of the noncitizens in the ACS  
8 actually answer the question correctly. So,  
9 apparently, those people don't consider it a  
10 problem. So it appears to be a rather small  
11 demographic that is concerned about this. And  
12 again, I would point out that when you understand  
13 that the data that is being protected by law,  
14 cannot be used for any enforcement purpose, cannot  
15 be used to identify an individual, there's  
16 absolutely no reason I can think of why someone  
17 would not answer the census honestly on that,  
18 citizen or noncitizen. It's demographic  
19 information.

20 Q So based on that, was it your  
21 understanding that if the DOJ did not make this  
22 request to the Department of Commerce or the

1 speculate on that.

2 BY MS. SENTENO:

3 Q Okay. Are you aware of any VRA cases  
4 that the Department of Justice declined to bring,  
5 only because they needed block-level citizenship  
6 data?

7 A I'm not aware of that, but I didn't  
8 research that either.

9 Q So no -- neither yourself or anyone else  
10 at the Department of Commerce asked DOJ for this  
11 information?

12 A I did not. I can't say whether anybody  
13 else did.

14 Q So -- just a couple more questions.  
15 The ACS is not a head count, correct?

16 A That's right. It's a sample.

17 Q But the decennial census is a head count,  
18 correct?

19 A That's correct. Counts all persons.

20 Q And a decrease in the response rate in  
21 the citizen question on the 2016 ACS caused an  
22 underestimate of the percent of noncitizens; is

1 that correct?

2 A No. That's not correct.

3 Q Can you explain?

4 A Well, you're asserting that it's because  
5 of the citizenship question, and I'm not sure that  
6 the data supports that statement.

7 Q What are you -- what do you believe the  
8 data supports?

9 A Again, without the data sitting in front  
10 of me, it would be hard to make an analysis. But  
11 basically, the Census Bureau has reported that  
12 certain number of people may drop off at certain  
13 questions. It's not dissimilar for citizenship  
14 versus other questions. There was not a major  
15 statistical variation. So, yes, a certain percent  
16 of people do not complete the 45, 48 or 70  
17 questions that are on the ACS or the long form,  
18 and they have various break-off rates under the  
19 Internet thing to tell where they stopped.

20 But, again, whether citizenship was a  
21 determinative factor in any of those cases, it's  
22 hard to determine.

1 Q But the data suggests -- the data that  
2 the Census Bureau provided suggests that the  
3 break-off rate for noncitizens was higher with  
4 respect to a citizen question; is that correct?

5 A Higher than noncitizen?

6 Q Yes.

7 A Yes. That's true.

8 Q Okay. So if the same people who did not  
9 respond to the citizen question on the ACS also  
10 didn't respond to the short form of the decennial  
11 census, that would cause a drop in the total head  
12 count, correct?

13 A No. It would not.

14 Q Could you explain?

15 A Secretary Ross placed the question at the  
16 end of the census so they would be able to not  
17 answer that and still complete the census. We  
18 also have administrative records and  
19 Secretary Ross directed we use administrative  
20 records, which we're actively doing for a variety  
21 of reasons, not just citizenship.

22 So we have every confidence between the

1 increased outreach that's planned, the additional  
2 money and resources that are to be put into the  
3 advertising and other things, that we will more  
4 than compensate -- in fact, our objection is to  
5 have a complete and accurate count above and  
6 beyond the count that was done in 2010.

7 Q But every individual is required to  
8 answer the census fully and completely, including  
9 all questions; is that not right?

10 A That's correct. Yes.

11 Though I would note, we've never  
12 prosecuted anybody for failure to do so.

13 MS. SENTENO: Okay. Go off the record.

14 VIDEOGRAPHER: We're going off the  
15 record. The time on the record is 5:46 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: We're back on the record.  
18 The time on the video is 5:43 p.m.

19 EXAMINATION BY MS. BOUTIN:

20 Q Sir, I'd like to talk about the time  
21 period between the December 12th DOJ letter  
22 requesting the citizenship question and before

1 Secretary Ross issued the March 26 memo --  
2 decision memo.

3 A I'm sorry. Could you tell me who you're  
4 with?

5 Q Sure. My name is Gabrielle Boutin. I'm  
6 with the Attorney General's of the State of  
7 California, and I represent plaintiffs, the  
8 State of California -- excuse me -- State of  
9 California v. Ross in the Northern District of  
10 California.

11 A Okay. Thank you.

12 Q So during the time period between the  
13 December 12th DOJ letter and the issuance of  
14 Secretary Ross's March 26th memorandum, that's  
15 what we're talking about.

16 A I understand.

17 Q Do you understand?

18 A So far so good.

19 Q Good.

20 During that time period, did the  
21 Department of Commerce ever inform the  
22 Department of Justice that the Census Bureau



1 recommended using administrative records alone to  
2 meet Justice's December 12th request rather than  
3 adding the citizenship question to the census?

4 A I believe that was part of the purposes  
5 of the meeting they were seeking with the -- the  
6 Census Bureau was seeking with the  
7 Justice Department.

8 Q Okay. My question is: Did the  
9 Commerce Department ever inform DOJ that the  
10 Census Bureau recommended using administrative  
11 records alone to meet their requests, rather than  
12 adding a citizenship question to the census?

13 A Again, I'm not privy to all the  
14 conversations with the Justice Department, so --

15 Q Do you --

16 A -- I was not --

17 Q -- know --

18 A I was not involved in such a discussion,  
19 no.

20 Q Okay. But you were one of the primary  
21 people working on this at Commerce; isn't that  
22 right?

1 A Yes.

2 Q Do you think you would have known if  
3 someone from Commerce conveyed that information to  
4 the Department of Justice?

5 MR. GARDNER: Objection. Calls for  
6 speculation.

7 BY MS. BOUTIN:

8 Q Do you think it's likely you would have  
9 known?

10 A It's possible, yes.

11 Q Did the Department of Commerce ever  
12 transmit to the Department of Justice any of the  
13 Census Bureau memos analyzing options for  
14 providing block-level -- excuse me -- block-level  
15 citizenship data to the Department of Justice?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 BY MS. BOUTIN:

19 Q That was repetitive. Let me rephrase.

20 A All right.

21 Q Did Commerce ever transmit to  
22 Department of Justice any of the Census Bureau's

1 memos that analyzed the options for providing to  
2 DOJ block-level citizenship data?

3 MR. GARDNER: Objection. Lack of  
4 foundation.

5 THE WITNESS: I would just note it's the  
6 Secretary of Commerce's decision as to whether  
7 this goes forward. His focus is on a complete and  
8 accurate count.

9 And as explained earlier, the Option C  
10 alternative, which was to use the administrative  
11 records only, would have inquired us to impute --  
12 so, in other words, fill in the blanks -- for 25  
13 million voting age citizens. That was not  
14 something Secretary Ross was prepared to have the  
15 department do.

16 BY MS. BOUTIN:

17 Q Mr. Comstock, I understand that. Your  
18 counsel is -- wants us to limit the amount or time  
19 that we're here today, and the best way to do that  
20 is if you would answer my questions directly. So  
21 I'll ask you again.

22 Did the Department of Justice ever --

1 A Not to my knowledge.

2 Q Okay. Thank you.

3 And again, we're talking about between  
4 December 12th and the March 26th.

5 A Right.

6 Q Did the Department of Commerce ever  
7 inform DOJ that the Census Bureau believed that  
8 administrative records alone would be more  
9 complete -- would create more complete and  
10 accurate citizenship data than asking a  
11 citizenship question on the census and then  
12 combining the data from that question with  
13 administrative records?

14 MR. GARDNER: Objection. Form.  
15 Objection. Lack of foundation.

16 BY MS. BOUTIN:

17 Q Do you want me to re-ask that question?

18 A Sure.

19 Q Did the Department of Commerce ever  
20 inform Justice that the Census Bureau believes  
21 that admin -- using administrative records alone  
22 would provide more complete and accurate data than

1 instead of doing that asking the citizenship  
2 question on the census and then combining that  
3 with the use of administrative records?

4 MR. GARDNER: Same objection.

5 THE WITNESS: Again, I think you  
6 mischaracterize the Census Department's -- Census  
7 Bureau's analysis. But, again, it's the  
8 Secretary of Commerce's decision as to what to  
9 make, and so he would only transmit to the  
10 Justice Department what he considered that would  
11 provide complete and accurate data.

12 BY MS. BOUTIN:

13 Q But the Commerce Department did inform  
14 the Department of Justice about that belief by the  
15 Census Bureau?

16 MR. GARDNER: Same objections.

17 THE WITNESS: Again, not to my knowledge.

18 BY MS. BOUTIN:

19 Q Okay. But did the Commerce Department  
20 ever inform Justice that the Census Bureau  
21 believed that 30 percent of responses by  
22 noncitizens as to citizen status are incorrect?

1 full paragraph, but I also want you to understand  
2 the context, so let's start at the top of the  
3 first paragraph.

4 A Okay.

5 Q It says, "In my judgment that Option D  
6 will product DOJ with the most complete and  
7 accurate CVAP" -- excuse me. Let me start again.

8 "It is my judgment that Option D will  
9 provide DOJ with the most complete and accurate  
10 CVAP data in response to its request."

11 The paragraph then goes on to give a few  
12 reasons why Option D would be the best option in  
13 his opinion and then about in the middle of the  
14 paragraph, it gives one final reason starting with  
15 the word "finally," so I'm going to read that  
16 portion.

17 A Okay.

18 Q It says, "Finally placing the question on  
19 the decennial census and directing the  
20 Census Bureau to determine the best means to  
21 compare the decennial census responses with  
22 administrative records will permit the

1 Census Bureau to determine the inaccurate response  
2 rate for citizens and noncitizens alike using the  
3 entire population. This will enable the  
4 Census Bureau to establish, to the best of its  
5 ability, the accurate ratio of citizen to  
6 noncitizen responses to impute for that small  
7 percentage of cases where it is necessary to do  
8 so."

9 A Yes.

10 Q So with respect to those two sentences  
11 starting with the word finally, who wrote that  
12 language?

13 A I couldn't say for certain, but I likely  
14 had a hand in drafting that.

15 Q Okay. Can you explain, how does adding a  
16 citizenship question to the census and determining  
17 the incorrect response rate for citizens and  
18 noncitizens help the Census Bureau impute with  
19 respect to people who did not respond at all and  
20 did not have administrative records?

21 A I mean, you could ask the Census Bureau  
22 for a fuller explanation of imputation, but

1 basically, they do a formula that looks at data  
2 that they have. And so if they know for the  
3 people -- let's say 95 percent of the population  
4 that they have accurate records for and which they  
5 have responses for, if they discover that -- pick  
6 a number -- it's now 10 percent of the people who  
7 aren't citizens, are, in fact, noncitizens, then  
8 they would probably apply that to 5 percent  
9 remaining. So they would take whatever number of  
10 people who are citizens, multiply that by that 5  
11 percent, and then they would take the noncitizens  
12 and say, okay, we now know the accurate count,  
13 based on the entire population of what we have,  
14 there's a 10 percent error rate, 10 percent of the  
15 people that might say they're citizens are  
16 noncitizens, so we're going to multiply that  
17 number out. That's going to give you the most  
18 accurate count that you can get.

19 Q So what's your source of that  
20 explanation?

21 A Based on the briefings.

22 Q So you're saying that the Census Bureau



1 supports this statement here?

2 A This is the Secretary's statement.

3 Whether the --

4 Q But did the Census Bureau explain,  
5 say -- explanation you just offered me -- did  
6 they -- did they explain it that way to you?

7 A More or less, yeah.

8 Q And do you believe they support this  
9 statement in this memo?

10 A I'm going to make no representations  
11 about what the Census Bureau would or would not  
12 support.

13 Q Would it surprise you if you learned that  
14 they did not support that statement, that they did  
15 not ever represent to you or the Secretary that  
16 establishing that ratio would help impute for  
17 nonresponders?

18 A I would not be surprised if that was the  
19 opinion of Dr. Abowd, no.

20 Q Do you believe that Dr. Abowd wrote this  
21 memos on his own?

22 A I believe he had the help of lots of

1 staff. I have no --

2 Q Do you believe he acted against the  
3 opinions of his staff when he wrote the memos?

4 A I have no idea.

5 Q So -- but you believe that it was his  
6 opinion alone that contributed to -- that was  
7 reflected in those memos?

8 A No. Dr. Abowd is the head of the  
9 division that does that, so at the end of the day,  
10 he gets the final call, so --

11 And, again, just to be clear, do I think  
12 that there may be other opinions in the  
13 Census Bureau? Absolutely.

14 Q So do you have any source, other than the  
15 Census Bureau, for believing in the scientific  
16 empirical accuracy of these last two sentences of  
17 this paragraph?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. My experience, my  
20 knowledge and other people who also, including the  
21 Secretary, who is a very smart man, who also came  
22 to a similar conclusion.

1 BY MS. BOUTIN:

2 Q Do you believe you have more expertise in  
3 the science of imputation than the experts at the  
4 Census Bureau?

5 A I'm not going to get caught in making  
6 such a statement, but I'm perfectly capable of  
7 looking at the analysis they provided and deciding  
8 whether or not I agreed with that analysis.

9 Q What's your background in statistical  
10 imputation?

11 A I --

12 (Conference call interruption.)

13 BY MS. BOUTIN:

14 Q What is your background in statistical  
15 imputation?

16 A I don't have one.

17 Q Okay. Switching gears. Did you ever ask  
18 anyone at the Census Bureau whether placing the  
19 citizenship question on the census could affect  
20 the apportionment of the Congressional  
21 representatives to the state?

22 A I never asked that question.

1           Q   Are you aware of whether anyone else at  
2 Commerce ever asked that question to the  
3 Census Bureau?

4           A   Not to my knowledge.

5           Q   Okay.

6           MS. BOUTIN: I believe that's all I have.

7           MS. GOLDSTEIN: Let's go off the record.

8           MS. BOUTIN: Yeah. Let's go off the  
9 record.

10          VIDEOGRAPHER: We're going off the  
11 record. The time on the video is 5:56 p.m.

12          (Off the record.)

13          VIDEOGRAPHER: We're back on the record.  
14 The time on the video is 6:02 p.m.

15          MS. BOUTIN: We have completed our  
16 questions for today. However, based on the fact  
17 that there are still outstanding discovery  
18 responses and discovery documents, we are keeping  
19 the deposition open at this time.

20          MR. GARDNER: We oppose that, of course.  
21 You had the option to put this off, if you wanted  
22 to, knowing there were outstanding issues and

## 1 ACKNOWLEDGEMENT OF DEPONENT

2 I, EARL COMSTOCK, do hereby acknowledge I  
3 have read and examined the foregoing pages of  
4 testimony, and the same is a true, correct and  
5 complete transcription of the testimony given by  
6 me, and any changes or corrections, if any, appear  
7 in the attached errata sheet signed by me.

8  
9  
10  
11  
12  
13 \_\_\_\_\_  
14 Date

\_\_\_\_\_ EARL COMSTOCK

15 Joshua E. Gardner, Esquire

16 U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

17 Washington, D.C. 20530

18 IN RE: New York Immigration Coalition, et al., v.  
United States Department of Commerce, et al.

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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et  
al., v. United States Department of Commerce, et  
al.,

Witness Name: EARL COMSTOCK

Deposition Date: Thursday, August 30, 2018

Page No.	Line No.	Change/Reason for Change
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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# EXHIBIT D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

NEW YORK IMMIGRATION :  
COALITION, et al., :

Plaintiffs, :

v. : Case No.

: 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT :  
OF COMMERCE, et al., :

Defendants. :

- - - - -x

Friday, October 16, 2018  
Washington, D.C.

Videotaped Deposition of: [Global objection:](#)  
[401; 403](#)

JOHN GORE,  
called for oral examination by counsel for the  
Plaintiffs, pursuant to notice, at the law offices of  
Covington & Burling, LLP, One City Center, 850 Tenth  
Street, Northwest, Washington, D.C. 20001-4956,  
before Christina S. Hotsko, RPR, CRR, of Veritext  
Legal Solutions, a Notary Public in and for the  
District of Columbia, beginning at 9:05 a.m., when  
were present on behalf of the respective parties:



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A P P E A R A N C E S

On behalf of New York Immigration Coalition:  
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MALDEF

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DORIAN L. SPENCE, ESQUIRE  
Lawyers Committee for Civil Rights Under Law

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A P P E A R A N C E S C O N T I N U E D

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6

Also Present:

7 Dan Reidy, Video Technician

8

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Veritext Legal Solutions

Mid-Atlantic Region

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19

Washington, D.C. 20005

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18 May 2018

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\* (Exhibits attached to transcript.)

22

1 P R O C E E D I N G S

2 VIDEO TECHNICIAN: Good morning. We are  
3 going on the record at 9:05 a.m. on Friday,  
4 October 26th, 2018.

5 Please note that the microphones are  
6 sensitive and may pick up whispering, private  
7 conversations, and cellular interference. Please  
8 turn off all cell phones or place them away from  
9 the microphones, as they can interfere with the  
10 deposition audio.

11 Audio and video recording will continue  
12 to take place unless all parties agree to go off  
13 the record.

14 This is media unit 1 of the  
15 video-recorded deposition of John Gore, taken by  
16 counsel for the plaintiff in the matter of the  
17 New York Immigration Coalition, et al. versus the  
18 United States Department of Commerce, et al.

19 This case is filed in the United States  
20 District Court for the Southern District of New  
21 York.

22 This deposition is being held at the law

1 offices of Covington & Burling, LLP, located at  
2 850 Tenth Street, Northwest, Washington, D.C.  
3 20001.

4 My name is Dan Reidy from the firm  
5 Veritext Legal Solutions, and I'm the  
6 videographer. The court reporter is Christina  
7 Hotsko from the firm Veritext Legal Solutions.

8 I am not authorized to administer an  
9 oath, I am not related to any party in this  
10 action, nor am I financially interested in the  
11 outcome.

12 Counsel and all present in the room will  
13 now state their appearances and affiliations for  
14 the record. If there are any objections to  
15 proceeding, please state them at the time of your  
16 appearance, beginning with the noticing attorney.

17 MR. HO: Detail Ho for the New York  
18 Immigration Coalition plaintiffs.

19 MR. TOPAZ: Jonathan Topaz for NYC  
20 plaintiffs.

21 MS. HULETT: Denise Hulett for Lupe  
22 plaintiffs.



1 MR. SPENCE: Dorian Spence for BAJI and  
2 the City of San Jose.

3 MS. ANDRIOLA: Eri Andriola for the Lupe  
4 plaintiffs.

5 MR. GREENBAUM: John Greenbaum from the  
6 City of San Jose and BAJI.

7 MS. THOMAS: Tina Thomas for the Kravitz  
8 plaintiffs.

9 MS. KOPPLIN: Rebecca Kopplin from the  
10 Department of Justice.

11 MS. LACOUR: Alice Lacour from the  
12 Department of Justice.

13 MR. SHUMATE: Brett Shumate from the  
14 Department of Justice.

15 MR. GARDNER: Josh Gardner for the  
16 Department of Justice on behalf of the defendants.

17 MR. SAINDOM: Andrew Saindom on behalf of  
18 the District of Columbia.

19 MS. NANNERY: And Valerie Nannery from  
20 the District of Columbia attorney general's  
21 office.

22 MR. DOREY: David Dorey from the

1 Department of Commerce.

2 MR. DEWHIRST: David Dewhirst from the  
3 Department of Commerce.

4 VIDEO TECHNICIAN: Will the court  
5 reporter please swear in the witness.

6 Whereupon,

7 JOHN GORE, **Global objection:  
401; 403**  
8 being first duly sworn or affirmed to testify to  
9 the truth, the whole truth, and nothing but the  
10 truth, was examined and testified as follows:

11 EXAMINATION BY COUNSEL FOR

12 THE NEW YORK IMMIGRATION COALITION

13 BY MR. HO:

14 Q. Mr. Gore, have you been deposed before?

15 A. No.

16 Q. But you have been in depositions before,  
17 correct?

18 A. Yes.

19 Q. Roughly how many times have you attended  
20 a deposition?

21 A. Ten.

22 Q. You understand that you're under oath

1 Dr. Lisa Handley and also one submitted by Pam  
2 Karlan.

3 Q. Are you aware of topics that were covered  
4 in any of the depositions in any of the litigation  
5 over the citizenship question?

6 MR. GARDNER: Objection. Vague.

7 BY MR. HO:

8 Q. You can answer.

9 A. No, I don't believe so.

10 Q. Did you consult with any staff in the  
11 civil rights division such as voting section chief  
12 Chris Herren in preparation for your deposition?

13 A. Yes.

14 Q. Who did you consult with in the civil  
15 rights division in preparation for your  
16 deposition?

17 A. Chris Herren.

18 Q. Anyone else?

19 A. No.

20 Q. Before you began working at DOJ, you were  
21 an attorney in private practice, correct?

22 A. Yes.

1 Q. And as an attorney in private practice,  
2 you litigated some cases involving claims under  
3 Section 2 of the Voting Rights Act, correct?

4 A. Yes.

5 Q. You're familiar with the term citizen  
6 voting age population, the acronym C-V-A-P, or  
7 what I'll refer to as CVAP today?

8 A. Yes.

9 Q. And you're familiar with the term ACS for  
10 American Community Survey?

11 A. I am.

12 Q. You're familiar with the first  
13 precondition for Section 2 liability under  
14 Thornburg versus Gingles?

15 A. Yes.

16 Q. And one way of describing the first  
17 Gingles precondition for Section 2 liability under  
18 the Voting Rights Act is that plaintiffs must  
19 demonstrate that racial minorities are  
20 sufficiently numerous so as to form a majority of  
21 a compact single-member district. Is that your  
22 understanding?

1           A.   That's -- more or less.   Yeah.

2           Q.   Prior to coming to the Department of  
3   Justice, with respect to all of the cases that you  
4   litigated under Section 2 of the Voting Rights  
5   Act, you represented defendants, correct?

6           A.   That's correct.

7           Q.   In all of your experience representing  
8   defendants in cases under Section 2 of the Voting  
9   Rights Act, you never took the position that the  
10   plaintiffs block-level CVAP data was insufficient  
11   to establish the first Gingles precondition  
12   because it was a statistical estimate, correct?

13          A.   When I was in private practice, I was  
14   representing a client, so my clients took various  
15   positions. And as a lawyer, I pursued those  
16   positions on behalf of clients in court. I can't  
17   recall an instance where a client of mine took  
18   that position.

19          Q.   And in all of your experience litigating  
20   cases under Section 2 of the Voting Rights Act,  
21   you're not aware of, in any of your cases, a  
22   situation where a court held that block-level CVAP

1 data was insufficient to satisfy the first Gingles  
2 precondition because it was a statistical  
3 estimate, correct?

4 A. You're talking about cases I actually was  
5 involved in?

6 Q. That's correct.

7 A. As a litigant or as attorney?

8 Q. As an attorney.

9 A. As an attorney. No, I'm not aware of any  
10 such case.

11 Q. Do you have any experience drawing  
12 districts for purposes of complying with the first  
13 Gingles precondition?

14 A. That's a -- that's a fair question. In  
15 one of our cases, we did have a case that went to  
16 a remedial phase. I wouldn't say I was involved  
17 in drawing the district, but I was certainly  
18 involved in reviewing various remedial proposals  
19 and other proposals that were submitted to the  
20 court in the course of litigation.

21 Q. So let me clarify my question. My  
22 question is about the technical aspects of

1 actually getting the census data, taking the

2 mapping software, and drawing a district.

3 You don't have any experience doing that,

4 correct?

5 A. That's correct. I've never sat in front

6 of a computer with Maptitude and drawn a district.

7 Q. Okay. You don't have any experience --

8 so that would mean you don't have any experience

9 drawing districts using ACS data, correct?

10 A. That's correct.

11 Q. And you don't have any experience taking

12 census block-group level data and performing an

13 estimation procedure to produce block-level data,

14 correct?

15 A. No, I don't have that experience.

16 Q. You're currently acting assistant

17 attorney general for civil rights at the U.S.

18 Department of Justice, correct?

19 A. Correct.

20 Q. And when did you become the acting AAG

21 for civil rights?

22 A. July 28th, 2018.

1 Q. In that position, you are the head of the  
2 civil rights division, correct?

3 A. Correct.

4 Q. And you're a political appointee; you're  
5 not career civil rights division staff, correct?

6 A. Correct.

7 Q. One of the sections under your purview  
8 within the civil rights division is the voting  
9 section, correct?

10 A. Correct.

11 Q. And one of the duties of the voting  
12 section is to enforce Section 2 of the federal  
13 Voting Rights Act of 1965, correct?

14 A. That's correct.

15 Q. Is it fair to say that, as acting AAG for  
16 civil rights, you are authorized to speak on  
17 behalf of the civil rights division?

18 A. I think with respect to matters that fall  
19 within the purview of the civil rights division  
20 and the Office of the Assistant Attorney General  
21 for the civil rights division, that's correct, as  
22 a general matter.



1 Q. You take your interactions with DOJ staff  
2 from outside of the civil rights division  
3 seriously, right?

4 MR. GARDNER: Objection. Vague.

5 THE WITNESS: I take all of my  
6 interactions in a professional capacity  
7 professionally and, hopefully, seriously as well.  
8 BY MR. HO:

9 Q. When you interact with DOJ staff who are  
10 not members of the civil rights division, you are  
11 in some sense acting as a representative of the  
12 civil rights division in those interactions with  
13 non-civil rights division DOJ staff, correct?

14 A. Not necessarily. In certain cases that  
15 would be true, but there are instances in which  
16 that wouldn't necessarily be correct.

17 Q. The Department of Justice sent a letter  
18 to the Census Bureau on December 12th, 2017,  
19 requesting that a citizenship question be included  
20 on the 2020 decennial census questionnaire,  
21 correct?

22 A. I have no basis to dispute the date

1 there. Yes, the department did send a letter.  
2 Whether it was December 12th -- I believe that's  
3 correct, but I don't have the letter in front of  
4 me, so I can't testify to that date necessarily.  
5 But yes, there was a letter that was sent in that  
6 time frame from the Department of Justice to the  
7 Census Bureau.

8 Q. There's no other reason besides Voting  
9 Rights Act enforcement that formed the basis of  
10 the Department of Justice's request that a  
11 citizenship question be added to the 2020  
12 decennial census questionnaire, correct?

13 MR. GARDNER: Objection to the extent it  
14 calls for the disclosure of information subject to  
15 the deliberative process privilege.

16 To the extent you can answer the question  
17 without divulging such information, you may do so.  
18 Otherwise, I instruct you not to answer.

19 THE WITNESS: I think the letter speaks  
20 for itself. Again, I don't have it in front of  
21 me.

22

1 BY MR. HO:

2 Q. The letter does not express any reason  
3 for requesting a citizenship question be added to  
4 the 2020 decennial census questionnaire besides  
5 Voting Rights Act enforcement, correct?

6 A. Again, I think the letter speaks for  
7 itself. And I don't have a copy of it in front of  
8 me, so I can't say what it does or doesn't say.

9 (Gore Deposition Exhibit 1 marked for  
10 identification and attached to the  
11 transcript.)

12 BY MR. HO:

13 Q. I'm going to show you something that's  
14 been marked as Plaintiff's Exhibit -- as, sorry,  
15 Exhibit 1.

16 A. Okay.

17 Q. This is an e-mail from you to Arthur Gary  
18 dated December 18th, 2017, correct?

19 A. It appears to be. Yes.

20 Q. The subject line of this e-mail is  
21 talking points, correct?

22 A. Correct.

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. You agree that the department is seeking  
4 the most complete and accurate data regarding  
5 total citizenship rates in voting districts that  
6 the Census Bureau can provide, correct?

7 A. Yes, that's correct.

8 Q. And do you believe that the letter from  
9 the Department of Justice to the Census Bureau  
10 requesting the inclusion of a citizenship question  
11 is consistent with the department's goal of  
12 seeking the most complete and accurate data  
13 regarding total citizenship rates that the Census  
14 Bureau can provide?

15 A. I think it's consistent with that  
16 objective, but is not the full picture of the data  
17 that the Department of Justice would use and would  
18 want to have at its disposal.

19 Q. When you say that it is not the full  
20 picture of the data that the Department of Justice  
21 would use and want to have, what did you mean by  
22 that?

1           A. Well, what I mean is there are various  
2 sources of data on citizenship. And in the modern  
3 world, we live in a data-driven world. And the  
4 Department of Justice is always trying to find the  
5 best possible data, whether it's from one source  
6 or multiple sources, to analyze jurisdictions for  
7 potential Section 2 violations and to bring  
8 appropriate Section 2 enforcement actions.

9           And the letter lays out reasons why -- is  
10 my recollection -- reasons why collecting data  
11 from the census questionnaire, in addition to  
12 other sources, would be an appropriate means for  
13 the Department of Justice to collect the best  
14 possible total data that it could collect.

15           Q. What are the other sources other than the  
16 decennial census questionnaire that you're  
17 referring to for the collection of citizenship  
18 data?

19           A. We already have a citizenship question on  
20 the ACS. And there may be other sources that I'm  
21 not aware of, but that's the source that comes to  
22 mind.

1 Q. Okay. Decennial census questionnaire,  
2 American Community Survey. Besides those two  
3 sources, are there other sources of citizenship  
4 data that you're aware of that the Department of  
5 Justice could rely on for purposes of Section 2  
6 enforcement?

7 A. Not that I'm aware of.

8 Q. You agree that having the most complete  
9 and accurate data regarding citizenship rates that  
10 the Census Bureau could provide would allow the  
11 department to fulfill its commitment to robustly  
12 enforcing the Voting Rights Act?

13 A. Yes, I do.

14 Q. I want to show you another document.  
15 It's been pre-marked as Exhibit 2.

16 (Gore Deposition Exhibit 2 marked for  
17 identification and attached to the  
18 transcript.)

19 BY MR. HO:

20 Q. This is a Bloomberg transcript of your  
21 testimony on May 21, 2018, before the House  
22 Oversight Committee.

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1 Do you remember your testimony that day?

2 A. I do.

3 Q. You were under oath that day under  
4 penalty of perjury, correct?

5 A. I was.

6 Q. And you testified truthfully that day,  
7 correct?

8 A. I did.

9 Q. Now, although you testified before the  
10 House Oversight Committee on May 21st, you were  
11 previously called to testify before the committee  
12 on -- I'm sorry; I may have said the wrong -- no,  
13 I said the right date. Let me start that again.

14 A. Go ahead.

15 Q. Although you testified before the House  
16 Oversight Committee on May 21st, you were  
17 previously called to testify before the committee  
18 on May 8th, 2018, correct?

19 A. That's actually not correct. I was never  
20 called to testify before the committee. I was  
21 invited to testify. The committee invited me to  
22 testify on May 8th alongside witnesses from the

1 but you ended up not testifying on May 8th,  
2 correct?

3 A. That's correct.

4 Q. And you're aware that when you didn't  
5 testify on May 8th, the chairman of the oversight  
6 committee, Representative Gowdy, stated that he  
7 would ask you to appear by legal compulsory -- is  
8 how he put it -- if necessary.

9 You're aware of that?

10 A. That sounds right. Yeah.

11 Q. And so when you did appear on May 21st,  
12 you understood that it was an important hearing,  
13 right?

14 A. I believe that -- I would hope that every  
15 hearing before Congress is an important hearing.  
16 Yeah.

17 Q. We would all hope.

18 You wanted to make sure that your  
19 testimony on May 21st was accurate, right?

20 A. Yes.

21 Q. And you wanted to make sure that -- to  
22 the extent you could discuss the issues that were

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1 raised that day, you wanted to make sure that your  
2 testimony was complete, right?

3 A. Yes, to the extent I was able to testify  
4 about matters consistent with Department of  
5 Justice policy and privileges.

6 Q. And you didn't want to leave anything  
7 important out of your testimony on May 21st,  
8 correct?

9 MR. GARDNER: Objection. Form.

10 THE WITNESS: I think that's largely  
11 correct, although again, there were strict limits  
12 on the testimony that I could give, the topics  
13 that I was authorized to discuss, and how I could  
14 go about answering questions.

15 BY MR. HO:

16 Q. You prepared for your testimony on May  
17 21st. You didn't just show up without preparing,  
18 right?

19 A. I prepared. Yeah.

20 Q. And you held a moot to prepare for your  
21 testimony on May 21st, right?

22 A. That sounds right.

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1 Affairs. And I can't speak for who they did or  
2 did not invite. I can remember some people who  
3 were there, but I don't know who they all did or  
4 did not invite.

5 Q. You're not aware of any voting section  
6 staff being invited to participate in your moot to  
7 prepare for the May 21st hearing, correct?

8 A. To the -- I think that's correct.

9 Q. And no career voting section staff  
10 attended your moot on -- to prepare for the May  
11 21st hearing, correct?

12 A. That's correct, although voting section  
13 staff did help me prepare for the hearing.

14 Q. So I want to ask about your testimony.  
15 If you could turn to page 20 of the Bloomberg  
16 transcript, Exhibit 2.

17 A. Sure.

18 Q. So on the top of the page, I believe you  
19 testified, "Let me just be clear, Congressman,  
20 there's no dispute that the Department of Justice  
21 needs citizenship voting population data to  
22 enforce Section 2 or that it needs that data at

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1 the block level."

2 It's still your view that the Department  
3 of Justice needs citizen voting age population  
4 data at the census block level to enforce  
5 Section 2 of the Voting Rights Act, correct?

6 A. Yes, in some form or another. The  
7 citizenship data at the block level is necessary  
8 to bring Section 2 cases.

9 Q. And the census block is the smallest unit  
10 of census geography, right?

11 A. That is correct.

12 Q. The next sentence of your testimony  
13 reads, "And our letter explains why hard count  
14 census data would be better suited for that  
15 purpose than the ACS. It's easier to use because  
16 it's already available at the block level and more  
17 accurate because it's hard count and not a" -- and  
18 then you were interrupted.

19 When you say hard count census data,  
20 you're drawing a distinction between an actual  
21 count, like the decennial census enumeration, and  
22 statistical estimates based on a sample survey

1 like the ACS, correct?

2 A. That's correct.

3 Q. Okay. And your testimony is that hard  
4 count data is preferable to available statistical  
5 estimates, like the ACS, for purposes of VRA  
6 enforcement, correct?

7 A. Yes. And I think what I was testifying  
8 to here is what's in the letter, which again, is  
9 not in front of me. But my recollection of the  
10 letter is that it laid out reasons why that hard  
11 count data would be more appropriate than an ACS  
12 estimate for that purpose.

13 Q. How about -- turn to page 27 of the  
14 transcript. In the first full paragraph on page  
15 27, you testified, "And having more -- having it  
16 on the census would make it easier for us to use  
17 and it would also make it more accurate, or at  
18 least that's the judgment of the Census Bureau."

19 When you referred to the judgment of the  
20 Census Bureau, what were you referring to?

21 A. I think I was referring to two things.  
22 First of all, I was -- I only know anything about

1 the judgment of the Census Bureau from publicly  
2 available information. Secretary Ross issued a  
3 memo of decision with respect to the letter that  
4 the Department of Justice submitted in which he  
5 decided, among other things, to order  
6 reinstatement of the citizenship question on the  
7 census questionnaire.

8 I also had watched at least portions of  
9 the May 8th hearing before the committee that you  
10 referenced earlier, and understood from testimony  
11 at that hearing that that was the position of the  
12 Census Bureau.

13 Q. So when you say the judgment of the  
14 Census Bureau, whose judgment, if you could  
15 identify individuals, are you referring to?

16 A. Secretary Ross would be one. And the  
17 other would be -- I can't remember who it was who  
18 testified at the hearing, but it was whoever  
19 testified at the hearing about the accuracy of a  
20 hard count versus an estimate. It may have been  
21 Ron Jarmin or somebody else. I just can't  
22 remember.

1 Q. May 8th -- the May 8th hearing?

2 A. The May 8th hearing, yeah.

3 Q. And when you say Ron Jarmin, you're  
4 referring to the acting director of the Census  
5 Bureau?

6 A. That's who I understand he is. I've  
7 never met him.

8 Q. When you testified that it was the  
9 judgment of the Census Bureau that CVAP data  
10 collected through the decennial enumeration would  
11 be more accurate, what did you mean by more  
12 accurate?

13 A. As I understand the judgment of the  
14 Census Bureau, it's that the hard count would be  
15 more accurate than an ACS estimate because an ACS  
16 estimate has a margin of error associated with it  
17 and also requires an extrapolation because, as  
18 you're no doubt aware, the ACS estimates are only  
19 released at the block group level, and so further  
20 extrapolation is required to estimate CVAP levels  
21 at the block level.

22 And it was my understanding, from

1 Secretary Ross' memo and the testimony that I  
2 believe I heard on May 8th, that the Census Bureau  
3 believed that a hard count would be more accurate  
4 than estimates of an extrapolation with an  
5 associated margin of error.

6 Q. And just so we're clear on your  
7 understanding, your understanding is that, in the  
8 judgment of the Census Bureau, it would be more  
9 accurate to have CVAP data collected through the  
10 decennial enumeration than the existing ACS data  
11 for two reasons: One, the decennial enumeration  
12 data is a hard count and not an estimate; and,  
13 two, the decennial enumeration data is available  
14 at the census block level, and so you wouldn't  
15 have to perform an estimation procedure the same  
16 way that you do with the ACS; is that right?

17 MR. GARDNER: Objection. Compound.

18 THE WITNESS: As I understand your  
19 question, I believe that was Secretary Ross'  
20 judgment on behalf of the Department of Commerce,  
21 of which the Census Bureau is part. I don't have  
22 his memo right in front of me, so I can't -- I'm

1 going off of my memory rather than a document  
2 that's in front of me. But my recollection of  
3 that is that he analyzed a number of different  
4 options and concluded that reinstating the  
5 question on the census questionnaire, in addition  
6 to other data, would provide the most accurate and  
7 complete picture of data for the Department of  
8 Justice's purposes.

9 BY MR. HO:

10 Q. Now, all things being equal, the  
11 Department of Justice would want to use the CVAP  
12 data that was, in the Census Bureau's view, the  
13 more accurate data available, correct?

14 A. I think that's probably correct. I guess  
15 I could imagine a scenario, which I don't know is  
16 present here or not, where we would make a  
17 different judgment as to what was more accurate  
18 than the Census Bureau might. But that's correct.

19 Q. When you say we would make a different  
20 judgment as to what is more accurate than the  
21 Census Bureau might, who's we?

22 A. The Department of Justice.



1 Q. Who's we at the Department of Justice who  
2 is in a position to make an assessment as to  
3 whether or not CVAP data is more accurate than the  
4 Census Bureau?

5 A. I don't know. I can't point to any  
6 individual person. But, of course, we're  
7 constantly reviewing the data, the various data  
8 sources, the academic literature. We send people  
9 to conferences so that we can understand the  
10 latest about data in this area and other  
11 demographic areas.

12 But I don't believe there's any dispute  
13 at this point about what would be more accurate.  
14 And the Census Bureau is charged to make that  
15 judgment, as I understand it, as a matter of law.

16 Q. Do you think you're better situated than  
17 career Census Bureau professionals to make an  
18 assessment as to the accuracy of various forms of  
19 CVAP data?

20 A. Me personally?

21 MR. GARDNER: Objection to form.

22 THE WITNESS: Me personally?

1 BY MR. HO:

2 Q. Yes.

3 A. No, I don't.

4 Q. Let's look at page 2 of your testimony.  
5 Oh, I'm sorry --

6 A. It appears to be a list of the committee  
7 members' names.

8 Q. Yeah.

9 A. I'm happy to review that.

10 Q. We'll come back to that.

11 Let's look at page 37 of your testimony.

12 So the second-to-last question here is from  
13 Representative Krishnamoorthi. And he asks you,  
14 "Let me shift to another issue, which is, is the  
15 DOJ aware of any study, analysis, or projection of  
16 how the inclusion of the citizenship question will  
17 affect the response rate for the census?"

18 Your response was, "That's a great  
19 question, Congressman. I don't know the  
20 Department of Justice is aware of that. That's  
21 really a question for the Department of Commerce  
22 and the Census Bureau, since it is the Secretary

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1 of Commerce's province to decide which questions  
2 get included or are not within the bounds set by  
3 law."

4 When Representative Krishnamoorthi used  
5 the term --

6 A. Can you read the rest of my answer for  
7 completeness?

8 Q. "My understanding is that, from Secretary  
9 Ross' memo, that he took a hard look at that issue  
10 and didn't find empirical evidence to suggest that  
11 the question would lead to a reduction in response  
12 rates. That's based on the memo of decision that  
13 he issued. I obviously can't speak on his  
14 behalf."

15 Did I read that right?

16 A. Thank you. Yes.

17 Q. When the representative uses the term  
18 "response rates," what did you understand him to  
19 mean?

20 A. I understood him to be suggesting that  
21 adding a question and, in particular, reinstating  
22 a citizenship question might cause people not --

1 some incremental number of people not to answer  
2 the -- that question or fill out the census form.

3 Q. And your testimony was, on May 21st, that  
4 DOJ was not aware of any analysis indicating that  
5 the inclusion of the citizenship question will  
6 affect response rates to the census?

7 MR. GARDNER: Objection.  
8 Mischaracterizes the document.

9 THE WITNESS: I think what I've testified  
10 to is -- is what is here in the record, and that  
11 answer speaks for itself.

12 BY MR. HO:

13 Q. Well, what did you mean by that? Were  
14 you aware of any analysis as to whether or not  
15 including the citizenship question on the census  
16 could affect the rate at which the people respond  
17 to the census?

18 A. As I said then, and as I sit here today,  
19 no, I'm not aware of any -- any data on that  
20 issue. And as I further explained, Secretary Ross  
21 in his memo explains that he took a hard look at  
22 that issue and found no empirical evidence to

1 support the conclusion that there be a reduction  
2 in response rates from reinstatement of the  
3 citizenship question on the census questionnaire.

4 Q. One more question about your testimony  
5 for now. On page 27, the last question on the  
6 page from Representative Gowdy: "So if  
7 Secretary Ross wanted to include a question,  
8 what's your favorite movie, how would a court  
9 determine whether or not that was an appropriate  
10 question? I mean, I guess what I'm getting at is,  
11 what is the standard by which you judge the  
12 legitimacy of the inclusion or exclusion of a  
13 question on the census form?"

14 Your response: "I think that is a very  
15 good question. It's probably better directed to  
16 the commerce department. I'm not involved in the  
17 litigation. That's being handled out" -- and then  
18 you got cut off.

19 What do you mean when you testified on  
20 May 21st that you're not involved in the  
21 litigation over the citizenship question?

22 A. I am not a counsel of record in that

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1 case. I have not been involved in litigating that  
2 case on behalf of the United States. I have not  
3 written any of the briefs, filed any of the  
4 pleadings, or done anything like that. I am a  
5 witness in the case, obviously here -- sitting  
6 here today, and was involved in the decision that  
7 was made by the Department of Justice.

8 But under Department of Justice  
9 regulations, this is defensive litigation that's  
10 being handled by the civil division, and the  
11 counsel of record is in the civil division, not  
12 the civil rights division.

13 Q. When you say that you're not counsel of  
14 record, are you counsel in some other capacity in  
15 this litigation?

16 MR. GARDNER: Objection. Vague.

17 THE WITNESS: No.

18 BY MR. HO:

19 Q. And you're not a party in this case,  
20 right?

21 A. No.

22 Q. And neither the civil rights division nor

1 the Department of Justice itself is a party in  
2 this case, correct?

3 A. That's my understanding. I believe the  
4 case was brought against the Department of  
5 Commerce, but I've not studied the pleadings  
6 closely enough to know whether or not the  
7 Department of Justice is a party, but I believe  
8 it's not.

9 Q. And you wouldn't describe yourself as a  
10 consultant giving legal advice to counsel of  
11 record in this case, would you?

12 A. No.

13 Q. Mr. Gore, you sometimes use personal  
14 e-mail, text messages or private messaging apps to  
15 communicate about DOJ work, correct?

16 A. I believe I may have done that. Yeah.

17 Q. Which of those things have you used for  
18 DOJ work before?

19 A. Well, actually, I don't think I have used  
20 it for DOJ work, now that I think about it.

21 Q. You've sometimes sent e-mails between  
22 your personal gmail account and your DOJ account,

1 Q. I want to show you a document which we'll  
2 mark as Exhibit 3.

3 (Gore Deposition Exhibit 3 marked for  
4 identification and attached to the  
5 transcript.)

6 BY MR. HO:

7 Q. This bears the Bates number 000311. It's  
8 a letter dated November 4th, 2016, from Arthur  
9 Gary to then Census Bureau Director John Thompson.  
10 We discussed Mr. Gary before. You sent  
11 him those talking points in December of 2017,  
12 right?

13 A. I did. Yes.

14 Q. And Mr. Gary is the general counsel of  
15 the justice management division, or JMD, at the  
16 Department of Justice, correct?

17 A. That's correct.

18 Q. And JMD is the principal organizational  
19 unit responsible for management and administrative  
20 support of the Department of Justice, correct?

21 A. I trust you took that off of a website,  
22 because that was pretty fancy. That sounds right



1 to me. It's my understanding.

2 Q. In his first sentence, Mr. Gary writes to  
3 Mr. Thompson, "This letter supplements my letter  
4 of July 1st, 2016, in which I advised that, at  
5 that time, the Department of Justice had no needs  
6 to amend the current content or uses or to request  
7 new content in the American Community Survey (ACS)  
8 for the 2020 census."

9 Did I read that right?

10 A. Yes.

11 Q. On July 1, 2016, DOJ sent a letter to the  
12 Census Bureau indicating that it had no need to  
13 amend the current content or to request new  
14 content in the ACS for the 2020 census, correct?

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 THE WITNESS: I have no basis to answer  
18 that question. I wasn't employed at the  
19 department on July 1, 2016. And I don't believe  
20 I've ever seen a July 1, 2016, letter from the  
21 department to the Census Bureau.

22 That's certainly what that sentence says,

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1 but I can't verify or testify to that. I have no  
2 firsthand knowledge on that topic.

3 BY MR. HO:

4 Q. You're not aware of the Department of  
5 Justice, on July 1st, 2016, requesting new content  
6 for the American Community Survey or the 2020  
7 decennial census, are you, Mr. Gore?

8 MR. GARDNER: Objection. Lack of  
9 foundation.

10 THE WITNESS: I don't believe I am, no.

11 BY MR. HO:

12 Q. This letter on November 4th, 2016,  
13 formally requested that the Census Bureau include  
14 a new topic in the ACS relating to LGBT  
15 populations, correct?

16 A. Let me read this.

17 Q. Sure.

18 A. Okay. Can you repeat your question?

19 Q. Sure. This November 4th, 2016, letter  
20 formally requested that the Census Bureau include  
21 a topic on the ACS relating to LGBT populations,  
22 correct?

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1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: It appears to. Yeah.

4 BY MR. HO:

5 Q. This letter on November 4th, 2016, makes  
6 no other requests for changes to the 2020 census  
7 questionnaire or the ACS, correct?

8 MR. GARDNER: Objection. Lack of  
9 foundation.

10 THE WITNESS: Again, it doesn't -- what  
11 I've read so far doesn't mention any other  
12 request.

13 BY MR. HO:

14 Q. When you say what you've read so far,  
15 have you read the complete letter?

16 A. I've read the complete letter. There's a  
17 reference to an attached spreadsheet in the letter  
18 that's not attached here, so I haven't looked at  
19 that just now.

20 Q. Okay. But the face of this letter does  
21 not make requests for any additional information  
22 on either the ACS or the 2020 census questionnaire

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1 other than a request about LGBT populations for  
2 the ACS, correct?

3 MR. GARDNER: Objection. Lack of  
4 foundation.

5 THE WITNESS: That appears to be correct  
6 on the face of the letter.

7 BY MR. HO:

8 Q. This letter does not make any mention of  
9 a request for citizenship data, correct?

10 MR. GARDNER: Same objection.

11 THE WITNESS: It does not on its face.

12 BY MR. HO:

13 Q. This letter does not make any request for  
14 the inclusion of a citizenship question on the  
15 census questionnaire, correct?

16 MR. GARDNER: Same objection.

17 THE WITNESS: It does not appear to.

18 BY MR. HO:

19 Q. You're not aware of any changes in  
20 circumstances since the date of this letter,  
21 November 4th, 2016, that would require a change to  
22 the Department of Justice's view that, as of the

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1 MR. GARDNER: Objection. Form.

2 Objection. Lack of foundation.

3 THE WITNESS: What -- I'm still not  
4 following the circumstances.

5 BY MR. HO:

6 Q. Let me -- let me try again.

7 A. Can you specify?

8 Q. Are you aware of any changes in law since  
9 November 4th, 2016, with respect to requirements  
10 for enforcing Section 2 of the federal Voting  
11 Rights Act?

12 MR. GARDNER: Objection. Form.

13 Objection. Lack of foundation.

14 THE WITNESS: I do believe -- since  
15 November of 2016, I can think of at least one  
16 Supreme Court case dealing with Section 2 of the  
17 Voting Rights Act. I'm not sure this is what  
18 you're asking, but I am aware of court cases that  
19 have been decided since November of 2016 on that  
20 issue.

21 BY MR. HO:

22 Q. Are you aware of any changes in law since

1 November 4th, 2016, with respect to the data that  
2 plaintiffs can rely on to establish the first  
3 Gingles precondition for Section 2 liability under  
4 the Voting Rights Act?

5 A. I'm not aware of any changes in law on  
6 that point, I don't believe.

7 Q. Are you aware of any changes to the forms  
8 of data available to plaintiffs bringing voting  
9 rights challenges since November 4th of 2016?

10 MR. GARDNER: Objection to form.

11 THE WITNESS: I do believe, at least in  
12 one case, the Department of Justice has advocated  
13 a new form of data for conducting a racially  
14 polarized voting analysis in the Eastpointe case,  
15 United States versus Eastpointe, Michigan, which  
16 at least the United States had not previously  
17 advocated. That's the analysis conducted at  
18 steps 2 and 3 of the Gingles analysis.

19 BY MR. HO:

20 Q. My question is just about the first  
21 Gingles precondition.

22 A. Okay.

1 Q. Are you aware of any changes to the forms  
2 of citizenship data available to plaintiffs  
3 bringing Voting Rights Act claims in order to  
4 satisfy the first Gingles precondition?

5 A. I'm not aware of any changes in the forms  
6 of data. I guess what I'm struggling with on your  
7 question is I don't think that that forecloses a  
8 request to reinstate the citizenship question on  
9 the census questionnaire.

10 Q. That's not my question.

11 A. So what the department is looking for is  
12 the most complete and accurate data it can  
13 possibly have to perform its function, and this is  
14 one more source of data that would allow the  
15 Department of Justice to carry out its enforcement  
16 mission.

17 Q. I understand what your position is on why  
18 you've requested the data. That's not my  
19 question. My question is --

20 A. Okay.

21 Q. -- just about any changes since  
22 November 4th of 2016 outside of the Department of

1 Justice.

2 And my question is, are you aware of any  
3 changes in the forms of citizenship data that are  
4 available for establishing the first precondition  
5 for Gingles -- the first Gingles precondition for  
6 Section 2 liability since November 4th, 2016?

7 A. Let me give you this answer. As I  
8 understand what people were using in Section 2  
9 cases in November of 2016 for citizenship  
10 purposes, it was ACS data. And I understand that  
11 litigants are still using ACS data today.

12 Q. Are you aware of any changes in the  
13 social sciences about the assessment in that  
14 community of the accuracy of citizenship estimates  
15 based on ACS data since November 4th, 2016?

16 MR. GARDNER: Objection. Form.

17 THE WITNESS: Which community?

18 BY MR. HO:

19 Q. The social scientific community.

20 A. Okay.

21 MR. GARDNER: Same objection.

22 THE WITNESS: I'm not aware of any

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1 changes. I am aware that there are questions that  
2 have been raised in the social science community  
3 about the accuracy of the estimates and  
4 extrapolations that are derived from the ACS data.

5 (Gore Deposition Exhibit 4 marked for  
6 identification and attached to the  
7 transcript.)

8 BY MR. HO:

9 Q. I'm going to show you a document,  
10 Exhibit 4. This is a memo data November --  
11 September 8th, 2017, from Earl Comstock to  
12 Commerce Secretary Wilbur Ross. It's in the  
13 administrative record in this case. Although this  
14 printout doesn't bear the number, I believe it is  
15 AR12756.

16 Do you know Mr. Comstock?

17 A. No, I don't, actually.

18 Q. The first paragraph of Mr. Comstock's  
19 memo reads, "In early May, Eric Branstad put me in  
20 touch with Mary Blanche Hankey as the White House  
21 liaison in the Department of Justice. Mary  
22 Blanche worked for AG Sessions in his senate

1 office and came with him to the Department of  
2 Justice. We met in person to discuss the  
3 citizenship question. She said she would locate  
4 someone at the department who could address the  
5 issue. A few days later, she directed me to James  
6 McHenry in the Department of Justice."

7 Now, before I read that, were you aware  
8 that sometime prior to September 8th, 2017,  
9 officials from the Department of Commerce had  
10 spoken with officials within the Department of  
11 Justice regarding the issue of a citizenship  
12 question on the census?

13 A. Yes.

14 Q. What were you aware of with respect to  
15 conversations between Department of Commerce  
16 officials and the Department of Justice officials  
17 prior to September 8th, 2017, with respect to the  
18 issue of a citizenship question on the census?

19 MR. GARDNER: Objection to the extent  
20 that you're asking for information subject to the  
21 deliberative process privilege.

22 To the extent you can answer without

1 think -- I think so, but I'm not certain on --  
2 with respect to the involvement of the people  
3 mentioned in this particular paragraph.

4 Q. So your answer is, yes, you think that  
5 you were aware of communications between the  
6 Department of Justice and the Department of  
7 Commerce prior to September 8th, 2017 -- you think  
8 you were aware of those conversations before the  
9 request letter went out from the Department of  
10 Justice to the Census Bureau?

11 A. I'm sorry. Could we try that again?

12 Q. Sure. The conversations --

13 A. You're dealing with two different  
14 timelines.

15 Q. Sure.

16 A. Okay.

17 Q. The conversations that occurred that are  
18 referenced in this paragraph that happened between  
19 Commerce and Justice officials before  
20 September 8th, 2017 --

21 A. Yes.

22 Q. -- you were aware of those conversations

1 prior to the date when the Department of Justice's  
2 letter went to the Census Bureau to request a  
3 citizenship question in December of 2017, correct?

4 A. Yes.

5 Q. Okay. What were you aware of before that  
6 letter went out?

7 MR. GARDNER: Same objection.

8 To the extent you can answer the question  
9 without divulging information subject to the  
10 deliberative process privilege, you may answer.  
11 To the extent you can't, I'd instruct the witness  
12 not to answer.

13 MR. HO: Josh, let me finish the question  
14 before your objection --

15 MR. GARDNER: I thought you were done.

16 MR. HO: -- if that's okay.

17 MR. GARDNER: I apologize. I didn't mean  
18 to interrupt you.

19 BY MR. HO:

20 Q. When you say that you were aware of  
21 pre-September 8th conversations between Commerce  
22 and Justice about the citizenship question before

1 your letter from Justice to the Census Bureau went  
2 out requesting a citizenship question, what were  
3 you aware of with respect to the nature of those  
4 pre-September 8th conversations?

5 MR. GARDNER: Same objection. Same  
6 instruction.

7 THE WITNESS: I can tell you that I was  
8 aware of the fact that conversations had occurred.  
9 And beyond that, I don't believe I can give an  
10 answer in light of the instruction I've just  
11 received.

12 BY MR. HO:

13 Q. When you say that you were aware of the  
14 fact that conversations occurred, what do you mean  
15 by conversations?

16 A. I mean -- a conversation is a  
17 communication between two or more people, and I  
18 was aware that two or more people had talked to  
19 each other.

20 Q. When you say that you were aware that two  
21 or more people had talked to each other, which  
22 people were you aware had talked to each other?

1           A.   It was my understanding that somebody  
2   from Commerce had spoken to Mary Blanche Hankey,  
3   that someone had spoken to James McHenry, and that  
4   Secretary Ross had spoken to the attorney general.

5           Q.   And that all of those conversations were  
6   about the inclusion of a citizenship question on  
7   the census?

8           A.   I wasn't a party to those conversations,  
9   but my understanding is that they would have  
10  touched on that issue.

11          Q.   James McHenry is the director of the  
12   Executive Office for Immigration Review within  
13   DOJ, correct?

14          A.   He is now, although at that time he  
15   wasn't. At that time, he was on detail to the  
16   Office of the Associate Attorney General. And he  
17   had come from somewhere else. I can't remember.  
18   I think it was OCAHO, which is -- since we're in  
19   D.C. and talking about government things, it's an  
20   acronym that -- I don't know what it stands for.  
21   But Mr. McHenry has been involved -- has been an  
22   employee of the department for some time, but in

1 early 2017, was on detail to the Office of the  
2 Associate Attorney General.

3 Q. During this period, Mr. McHenry was not  
4 staff in the civil rights division, correct?

5 A. That's correct.

6 Q. And Mr. McHenry did not have any formal  
7 duties with respect to enforcement of the Voting  
8 Rights Act during this period, correct?

9 A. He had no formal duties. As I recall, he  
10 was for some period of time our point of contact  
11 in the Office of the Associate Attorney General,  
12 which is why I remember he was there. But he did  
13 not have formal duties with respect to  
14 enforcement.

15 Q. Do you know of any reasons why  
16 Mr. McHenry could address the issue of including a  
17 citizenship question on the census?

18 MR. GARDNER: Objection. Calls for  
19 speculation.

20 THE WITNESS: Yeah, I'd be speculating.  
21 I don't know.

22

1 BY MR. HO:

2 Q. So you don't know of any reasons why  
3 Mr. McHenry could address the issue of including a  
4 citizenship question on the census?

5 MR. GARDNER: Same objection.

6 THE WITNESS: I -- I don't know one way  
7 or the other.

8 BY MR. HO:

9 Q. When you say you're aware that  
10 conversations took place between Commerce  
11 officials and Mary Blanche Hankey and James  
12 McHenry, what were you aware of with respect to  
13 the content of those conversations prior to --  
14 those conversations that took place prior to  
15 September 8th, 2017?

16 MR. GARDNER: Objection.

17 To the extent that you can answer that  
18 question without divulging information subject to  
19 deliberative process privilege, you may do so.  
20 Otherwise, I instruct you not to answer.

21 THE WITNESS: As I testified before, I  
22 understood that those conversations related to the



1 issue of reinstating a citizenship question on the  
2 census questionnaire. Beyond that, I can't  
3 answer.

4 BY MR. HO:

5 Q. What was your understanding of who  
6 initiated those conversations?

7 A. My understanding was that those  
8 conversations were initiated by the Department of  
9 Commerce.

10 Q. Those initial conversations that are  
11 referred to in this memo, your testimony is that,  
12 to the best of your knowledge, those conversations  
13 were not initiated by the Department of Justice,  
14 correct?

15 A. Again, I wasn't a party to those  
16 conversations, but that's been my working  
17 understanding.

18 Q. And your working understanding is that  
19 the Department of Justice did not reach out to the  
20 Department of Commerce to initiate those  
21 conversations for the purposes of obtaining better  
22 data to enforce the Voting Rights Act, correct?

1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: Again, I wasn't a party to  
4 those conversations, but that's been my working  
5 understanding.

6 BY MR. HO:

7 Q. The second paragraph in this memo reads,  
8 "I spoke several times with James McHenry by phone  
9 and, after considering the matter further, James  
10 said that Justice staff did not want to raise the  
11 question, given the difficulties Justice was  
12 encountering in the press at the time, the whole  
13 Comey matter. James directed me to Gene Hamilton  
14 at the Department of Homeland Security."

15 So were you aware, before I read that,  
16 that as of September 8th, 2017, Justice staff did  
17 not want to raise the citizenship question?

18 MR. GARDNER: Objection. Lack of  
19 foundation.

20 THE WITNESS: Before you read that, yes,  
21 I was aware of that.

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1 BY MR. HO:

2 Q. Okay. When did you become aware -- so --  
3 I'm sorry. Let me start that question.

4 So your understanding is that, as of  
5 September 8th, 2017, Justice staff did not want to  
6 raise the citizenship question, correct?

7 A. Yes, that's my understanding, although it  
8 wasn't my understanding on September 8th; it was  
9 an understanding that I acquired later.

10 Q. When did you acquire the understanding  
11 that, as of September 8th, Justice staff did not  
12 want to raise the issue of a citizenship question?

13 A. Again, I think it was along the same  
14 timeline that I learned that these conversations  
15 had taken place, the conversations referenced in  
16 the first paragraph and the second paragraph  
17 involving Mr. McHenry. And I believe I became  
18 aware of those sometime after September 8th and  
19 before the letter was sent from the Department of  
20 Justice.

21 Q. How did you become aware of the fact  
22 that, as of September 8th, 2017, the Department of

1 BY MR. HO:

2 Q. When did you first become involved in  
3 deliberations about whether or not to request a  
4 citizenship question on the decennial census  
5 questionnaire?

6 A. I first became involved in either late  
7 August or early September of 2017.

8 Q. You can't get more precise than late  
9 August or early September?

10 A. Well, I think it was either a day or two  
11 before Labor Day in 20 -- the Labor Day weekend in  
12 2017 which I think that year may have fallen in  
13 late August.

14 Q. So as of September 8th, 2017, the date of  
15 Mr. Comstock's memo, your best recollection is  
16 that, as of that date, you were already involved  
17 in deliberations over whether or not to include a  
18 -- to request a citizenship question for the 2020  
19 census questionnaire?

20 A. That is correct. And I don't know --  
21 Mr. Comstock's memo is dated September 8th. He  
22 doesn't give any dates for any of these

1 conversations, so I don't know if this memo was  
2 contemporaneous to conversations or related back  
3 to prior conversations he'd had.

4 But yes, that's my recollection, that, as  
5 of September 8th, I would have been involved in  
6 those deliberations.

7 Q. How did you become involved in  
8 deliberations over whether or not to request the a  
9 citizenship question be included on the  
10 2020 census questionnaire?

11 MR. GARDNER: Objection.

12 To the extent that that answer would  
13 cause you to reveal information subject to  
14 deliberative process privilege, I instruct you not  
15 to answer. To the extent you can answer that  
16 question without divulging such information, you  
17 may do so.

18 THE WITNESS: I became involved through a  
19 conversation I had with two individuals at the  
20 Department of Justice.

21 BY MR. HO:

22 Q. Which two individuals at the Department

1 of Justice?

2 A. The attorney general and Mary Blanche  
3 Hankey.

4 Q. Roughly when did your conversations with  
5 Mary Blanche Hankey and the attorney general  
6 occur?

7 MR. GARDNER: Objection. Compound.

8 THE WITNESS: It was the day or two  
9 before the Labor Day weekend. The reason I  
10 remember that is that the attorney general is a  
11 college football fan, and he's a fan of the Auburn  
12 Tigers, so I ended the call with the cry for War  
13 Eagle, since the Auburn Tigers were playing their  
14 first game of the season that weekend.

15 BY MR. HO:

16 Q. What was communicated to you during that  
17 conversation with Attorney General Sessions?

18 MR. GARDNER: Objection. Calls for  
19 information subject to deliberative process  
20 privilege.

21 I instruct you not to answer.

22 THE WITNESS: Consistent with that

1 ask the question when was the decision made, I can  
2 let him answer that question. I'm not trying to  
3 be difficult. I just need to be careful here.

4 BY MR. HO:

5 Q. Had the decision already been made as of  
6 the date of your conversation with Attorney  
7 General Sessions to request a citizenship question  
8 be included on the 2020 census questionnaire?

9 A. The decision was made when the letter was  
10 sent in December of 2017.

11 Q. As of the date of Mr. Comstock's memo,  
12 September 8th, 2017, did you already have a view  
13 as to whether or not CVAP data based on  
14 statistical estimates were problematic in any way  
15 for purposes of VRA enforcement?

16 A. I was generally aware of issues related  
17 to ACS data from my prior work on cases involving  
18 Section 2 of the Voting Rights Act and cases  
19 involving gerrymandering claims under Shaw versus  
20 Reno. And I was aware that there were some  
21 limitations on the ACS data from that prior work.

22 Q. As of the date of your first conversation

1 with Attorney General Sessions, did you already  
2 have a few that hard count CVAP data would better  
3 suit DOJ's needs with respect to VRA enforcement  
4 than ACS estimates?

5 A. No, I don't believe I did.

6 Q. When did you arrive at the view that  
7 hard count decennial census data with respect to  
8 citizenship would better suit DOJ's VRA  
9 enforcement needs as compared to ACS citizenship  
10 estimates?

11 A. I'm sorry. Your question was when?

12 Q. Yes.

13 A. Sometime before the letter was sent.

14 Q. Can you give a more specific time frame  
15 than that?

16 A. Probably not.

17 Q. How did you arrive at the view that  
18 hard count citizenship data collected through the  
19 decennial census would better suit DOJ's  
20 enforcement needs than ACS estimates?

21 MR. GARDNER: Objection. Calls for  
22 information subject to deliberative process



1 privilege. I instruct the witness not to answer.

2 BY MR. HO:

3 Q. As of the date of your conversation with  
4 Attorney General Sessions, did you already have  
5 the view that the decennial census questionnaire  
6 would be the best vehicle for collecting CVAP data  
7 for purposes of VRA enforcement?

8 A. I don't recall having a view on that one  
9 way or the other as of that time.

10 Q. As of the date of Mr. Comstock's memo  
11 on September 8th, 2017, did you already have the  
12 view that the decennial census would be the best  
13 vehicle for collecting CVAP data for purposes of  
14 VRA enforcement?

15 A. I don't recall having a view on that  
16 issue one way or the other.

17 Q. Let me show you a document. We'll mark  
18 this as Exhibit 5.

19 (Gore Deposition Exhibit 5 marked for  
20 identification and attached to the  
21 transcript.)  
22

1 right. I could be off by a week or two. So it  
2 may have happened later. So I don't know exactly  
3 how that would align in time with this  
4 September 11th communication.

5 But I would say that it was -- so I stand  
6 on that answer.

7 Q. So that communication between the  
8 Secretary of Commerce and the attorney general,  
9 that was initiated by the Secretary of Commerce,  
10 correct?

11 MR. GARDNER: Objection. Lack of  
12 foundation.

13 THE WITNESS: I don't know. I wasn't a  
14 party to that conversation.

15 BY MR. HO:

16 Q. You mentioned you had a conversation with  
17 the attorney general around Labor Day. Did you  
18 understand from that conversation that the  
19 Secretary of Commerce initiated the conversation  
20 between the Secretary of Commerce and the attorney  
21 general? Correct?

22 A. That's been my working understanding.

1 Yes.

2 Q. Your working understanding is not that  
3 the attorney general initiated a conversation with  
4 the Secretary of Commerce about the citizenship  
5 question, correct?

6 A. That's correct.

7 Q. You responded to Mr. Gary's e-mail by  
8 asking him to give you a call. Did you have a  
9 conversation with Mr. Gary?

10 A. I don't know. I don't know if I had a  
11 conversation with him with specific reference to  
12 this e-mail. I can't -- I don't recall that.

13 Q. After receiving this e-mail, did you  
14 learn more from Mr. Gary about what he was  
15 referring to when he talked about concerns that  
16 the Commerce Secretary had?

17 A. I don't recall -- as I said, I don't  
18 recall discussing this with Mr. Gary. Obviously,  
19 we had some short e-mail correspondence, as this  
20 document lays out, but that's all I recall about  
21 it at this time.

22 Q. Mr. Gary said in this e-mail that he

1 BY MR. HO:

2 Q. Anyone who works in the front office of  
3 the Department of Commerce. Were you ever  
4 consulted by front office Department of Commerce  
5 employees -- that's what I mean by Secretary Ross'  
6 staff --

7 A. Okay.

8 Q. -- regarding whether the Department of  
9 Justice would support or request the inclusion of  
10 a citizenship question on the census?

11 MR. GARDNER: Same objection.

12 THE WITNESS: I guess I'm still not clear  
13 on what you mean by the front office of the  
14 Department of Commerce. I can recall speaking to,  
15 I believe, three individuals at the Department of  
16 Commerce about this issue.

17 BY MR. HO:

18 Q. Who are the three individuals at the  
19 Department of Commerce --

20 A. Sure.

21 Q. -- that you spoke to about the  
22 citizenship question on the census?

1           A.   I didn't mean to cut you off, and I  
2   apologize, again, to the court reporter for being  
3   a fast talker.

4                   I recall speaking to Peter Davidson,  
5   James Uthmeier, U-T-H-M-E-I-E-R -- and Wendy  
6   Teramoto.

7           Q.   When was the first occasion on which you  
8   consulted with one of those three individuals  
9   about the inclusion of a citizenship question on  
10  the census?

11          A.   I'm not sure I would describe it as a  
12  consultation as much as I would describe it as a  
13  conversation about various issues related to the  
14  reinstatement of a citizenship question on the  
15  census questionnaire. I can recall having  
16  conversations starting sometime around this  
17  September 2017 time frame.

18          Q.   Who was the first of those three  
19  individuals that you had a conversation with about  
20  the inclusion of a citizenship question on the  
21  2020 census?

22          A.   Peter Davidson.

1 Q. And roughly when was your first  
2 conversation with Peter Davidson about including a  
3 citizenship question on the 2020 census?

4 A. I don't recall exactly, but I would say  
5 it was probably around mid-September of 2017 or  
6 somewhere in that time frame.

7 Q. After you spoke to Mr. Davidson in  
8 mid-September, what was the next conversation that  
9 you had among those three individuals from  
10 Commerce about the citizenship question?

11 A. I don't recall exactly when it was. I  
12 had several conversations with Peter Davidson  
13 beginning in September and continuing through  
14 December. I had a couple of conversations as well  
15 with Mr. Uthmeier, including at least one between  
16 just Mr. Uthmeier and me and one, and maybe two,  
17 where Mr. Uthmeier and Peter Davidson were both  
18 involved. Then I had a conversation at one point  
19 with Wendy Teramoto about a scheduling issue that  
20 I think took place in October of 2017, but I don't  
21 recall exactly. Somewhere in that time frame.

22 Q. Roughly when was your first conversation

1 with Mr. Uthmeier about the citizenship question?

2 A. I think it would have been either late  
3 September or sometime in October of 2017.

4 MR. HO: We've been going for a little  
5 over an hour, about an hour-ten. Would now be an  
6 okay time for a first break?

7 MR. GARDNER: That's fine with me, yeah.

8 MR. HO: Great.

9 VIDEO TECHNICIAN: This concludes media  
10 unit number 1. The time on the video is  
11 10:19 a.m. And we are off the record.

12 (A recess was taken.)

13 VIDEO TECHNICIAN: This begins media unit  
14 number 2. The time on the video is 10:37 a.m. We  
15 are on the record.

16 BY MR. HO:

17 Q. Mr. Gore, I just want to follow up  
18 on something from before the break. The  
19 communications between the Department of Justice  
20 and the Department of Commerce about the  
21 citizenship question, those communications were  
22 not initiated by the voting section, correct?

1 A. That's correct. That's my understanding.

2 Q. And those communications were not  
3 initiated by anyone else in the civil rights  
4 division, correct?

5 A. Correct.

6 Q. And you did not initiate the  
7 communications between Commerce and Justice about  
8 the citizenship question, correct?

9 A. That's correct.

10 (Gore Deposition Exhibit 6 marked for  
11 identification and attached to the  
12 transcript.)

13 BY MR. HO:

14 Q. In front of you is a document that's been  
15 marked as Exhibit 7. It's an e-mail thread  
16 between, among other people, you, Macie Leach, and  
17 Wendy Teramoto. The first page of the document is  
18 Bates marked 0002628. It's from the  
19 administrative record.

20 MR. GARDNER: I think you may have said  
21 Exhibit 7. It's Exhibit 6.

22 MR. HO: Oh, I'm so sorry. Exhibit 6.



1 Thank you for clarifying, Josh.

2 MR. GARDNER: Sure.

3 BY MR. HO:

4 Q. The first e-mail on this thread is on the  
5 second page -- first in time, I mean. It's from  
6 you to Wendy Teramoto on Wednesday,  
7 September 13th, 2017, correct?

8 A. It appears to be. Yes.

9 Q. And that's two days after your exchange  
10 with Mr. Gary regarding 2020 census questions,  
11 correct?

12 A. Correct.

13 Q. And at the time that you sent this  
14 e-mail, you knew that Ms. Teramoto was the chief  
15 of staff to Commerce Secretary Ross, correct?

16 A. Correct.

17 Q. In the second sentence of your e-mail to  
18 Ms. Teramoto, you write, "I would like to talk to  
19 you about a DOJ-DOC issue," correct?

20 A. Correct.

21 Q. The DOJ-DOC issue that you're referring  
22 to in this e-mail is the citizenship question,

1 correct?

2 A. Correct.

3 Q. What prompted you to reach out to  
4 Ms. Teramoto to talk to her about the citizenship  
5 question?

6 MR. GARDNER: Objection.

7 To the extent that that answer calls for  
8 the divulsion of information subject to  
9 deliberative process privilege, I instruct you not  
10 to answer. To the extent you can answer that  
11 question without divulging such information, you  
12 may do so.

13 THE WITNESS: It was a conversation I had  
14 with Peter Davidson.

15 BY MR. HO:

16 Q. When was that conversation with  
17 Mr. Davidson?

18 A. I don't recall exactly.

19 Q. And what is Mr. Davidson's role at  
20 Commerce?

21 A. I don't know what his current role is.  
22 At the time, I understood him to be the general

1 counsel of the Department of Commerce.

2 Q. How did you come to talk to Mr. Davidson?

3 A. He called me.

4 Q. Did you know Mr. Davidson prior to that  
5 call?

6 A. No.

7 Q. Roughly when did that conversation with  
8 Mr. Davidson take place?

9 A. As I mentioned before, I had several  
10 conversations with Mr. Davidson over time. I  
11 don't know when exactly any of those conversations  
12 took place, and I don't know when this particular  
13 conversation took place.

14 Q. And Mr. Davidson asked you to reach out  
15 to Ms. Teramoto?

16 A. Yes, he did.

17 Q. Why did he ask you to reach out to  
18 Ms. Teramoto?

19 MR. GARDNER: Objection. To the extent  
20 that that answer calls for disclosing information  
21 subject to deliberative process privilege, I  
22 instruct the witness not to answer.

1 was to be about the citizenship question, correct?

2 A. That, I don't know.

3 Q. Well, the scheduling of that conversation  
4 that you were supposed to take part of [sic] came  
5 out of your e-mail to Ms. Teramoto about the  
6 citizenship question, correct?

7 A. I was not to take part in that  
8 conversation. I never did take part in that  
9 conversation, so I don't know.

10 Q. I meant the conversation between you and  
11 Ms. Teramoto to schedule a meeting between the  
12 attorney general and the Commerce Secretary, that  
13 conversation that you had with Ms. Teramoto arose  
14 out of your e-mail to Ms. Teramoto concerning the  
15 citizenship question, correct?

16 A. That sounds right. I can't remember  
17 whether we discussed exactly what the call between  
18 the attorney general and the Secretary would be  
19 about, is what I'm trying to convey.

20 (Gore Deposition Exhibit 7 marked for  
21 identification and attached to the  
22 transcript.)

1 BY MR. HO:

2 Q. Okay. I'm going to show you an e-mail  
3 that's been marked as Exhibit 7. It's an e-mail  
4 exchange between, among other people, you and  
5 Ms. Teramoto. The first page of it bears the  
6 Bates number 0002657. The top e-mail on the chain  
7 is dated 9/16/2017 from Danielle Cutrona to you,  
8 Mr. Gore, with a cc to Ms. Teramoto. It's part of  
9 the administrative record.

10 This e-mail thread -- or the top e-mails  
11 on this thread, these are subsequent to the e-mail  
12 that we talked about earlier between you and  
13 Ms. Teramoto, correct?

14 A. Correct.

15 Q. And these -- the top e-mails took place  
16 after your conversation with Ms. Teramoto,  
17 correct?

18 A. Correct.

19 Q. And you, after speaking with  
20 Ms. Teramoto, then introduced her to Danielle  
21 Cutrona from the Department of Justice, correct?

22 A. That's correct.

1 Q. And Ms. Cutrona was a senior advisor to  
2 the attorney general at this time, correct?

3 A. That's probably a fair characterization,  
4 yeah.

5 Q. Prior to when Attorney General Sessions  
6 became attorney general, Ms. Cutrona worked for  
7 him previously in the Senate as his counsel on the  
8 judiciary committee, correct?

9 MR. GARDNER: Objection. Lack of  
10 foundation.

11 THE WITNESS: I do know that she worked  
12 for him. I don't know what her title was.

13 BY MR. HO:

14 Q. And Ms. Cutrona also served on the Trump  
15 transition team in charge of immigration reform and  
16 building the wall, correct?

17 MR. GARDNER: Same objections. Same  
18 objection.

19 THE WITNESS: I actually don't know.

20 BY MR. HO:

21 Q. To your knowledge, Ms. Cutrona has no  
22 experience with enforcing Section 2 of the Voting

1 Rights Act, correct?

2 A. I don't know one way or the other.

3 Q. You're not aware of any experience that

4 Ms. Cutrona has with respect to enforcing

5 Section 2 of the Voting Rights Act, correct?

6 A. That's correct.

7 Q. Did Ms. Teramoto and Ms. Cutrona connect

8 after this e-mail exchange?

9 A. I believe that they did.

10 Q. How do you know that?

11 A. Because I believe that Danielle let me

12 know that they had.

13 Q. What knowledge do you have of what they  
14 discussed?

15 MR. GARDNER: Objection.

16 To the extent you can answer that  
17 question without divulging information subject to  
18 deliberative process privilege, you may do so.  
19 Otherwise, I instruct you not to answer.

20 THE WITNESS: Consistent with that  
21 instruction, I can't answer.

22

1 BY MR. HO:

2 Q. I'm going to show you another document.  
3 We'll mark this as Exhibit 8.

4 (Gore Deposition Exhibit 8 marked for  
5 identification and attached to the  
6 transcript.)

7 BY MR. HO:

8 Q. This is a continuation of the e-mail  
9 chain between you and Ms. Cutrona and  
10 Ms. Teramoto. The first page of it has the Bates  
11 number 0002653. It's part of the administrative  
12 record in this case. And the e-mail at the top is  
13 dated September 17th, 2017, from Ms. Cutrona to  
14 Ms. Teramoto.

15 The e-mail from Ms. Cutrona to  
16 Ms. Teramoto at the top reads, "Wendy, the  
17 attorney general is available on his cell. His  
18 number is" -- and then the number is redacted.  
19 "He is in Seattle, so he's three hours behind us.  
20 From what John told me, it sounds like we can do  
21 whatever you all need us to do and the delay was  
22 due to a miscommunication. The AG is eager to



1 assist."

2 So you had a conversation with

3 Ms. Cutrona, correct?

4 A. Yes.

5 Q. And when Ms. Cutrona in this e-mail  
6 writes, "from what John told me," what is she  
7 referring to? What did you tell Ms. Cutrona?

8 MR. GARDNER: Objection. To the extent  
9 that information would be subject to deliberative  
10 process privilege, I instruct the witness not to  
11 answer.

12 To the extent you can answer that without  
13 divulging such privileged information, you may do  
14 so.

15 THE WITNESS: Consistent with that  
16 instruction, I can't do so.

17 MR. HO: I just want to understand the  
18 position here. The conversation and -- the  
19 content of the conversation is referenced in the  
20 administrative record. The court has granted our  
21 motion to compel Mr. Gore's testimony based on his  
22 role in the request to include a citizenship

1 BY MR. HO:

2 Q. When Ms. Cutrona writes, "We are eager to  
3 assist," what did you understand her to mean by  
4 "assist"?

5 MR. GARDNER: Same objection. Same  
6 instruction.

7 THE WITNESS: Consistent with that  
8 instruction, I can't answer.

9 BY MR. HO:

10 Q. What was your reaction to receiving this  
11 e-mail?

12 MR. GARDNER: Objection. Lack of  
13 foundation.

14 THE WITNESS: I'm not sure I ever did  
15 receive this e-mail. I'm not copied on this  
16 e-mail between Wendy and Danielle.

17 BY MR. HO:

18 Q. Okay. I'm going to show you another  
19 document. We'll mark this as Exhibit 9.

20 (Gore Deposition Exhibit 9 marked for  
21 identification and attached to the  
22 transcript.)

1 BY MR. HO:

2 Q. This is another e-mail from the  
3 administrative record, the first page of which --  
4 the only page of which has Bates number 0002636.  
5 The top e-mail is an e-mail to you dated  
6 September 18th, 2017. September 18th, 2017,  
7 that's two days after you connected Ms. Teramoto  
8 and Ms. Cutrona, correct?

9 A. That seems to be correct. Yes.

10 Q. And the e-mail to you states, "Hi. AG  
11 and Sec spoke. Please let me know when you have a  
12 minute."

13 What did you understand that to mean, AG  
14 and Sec spoke?

15 A. I understood it to mean what it says it  
16 means, that the attorney general and the Secretary  
17 spoke.

18 Q. Secretary Ross, right?

19 A. Secretary Ross. Yes.

20 Q. Okay. What did you understand that they  
21 had spoken about?

22 MR. GARDNER: Objection. Calls for

1 information subject to deliberative process  
2 privilege. I instruct the witness not to answer.

3 THE WITNESS: Consistent with that  
4 instruction, I can't answer.

5 BY MR. HO:

6 Q. I'm not asking for the content of the  
7 conversation, just whether or not they spoke about  
8 the citizenship question. Is that your  
9 understanding?

10 A. Yes, that would be my understanding.

11 Q. What significance, if any, did you take  
12 from the fact that the attorney general and the  
13 Secretary of Commerce had spoken about the  
14 citizenship question?

15 MR. GARDNER: Objection. Vague.

16 THE WITNESS: I'm not sure I assigned any  
17 significance to it. I understood from this e-mail  
18 chain that the Secretary was interested in  
19 speaking to the attorney general.

20 BY MR. HO:

21 Q. What reaction, if any, did you have to  
22 the fact that the attorney general and

1 Secretary Ross and the Attorney General spoke?

2 A. Are you referring to the conversation  
3 between the attorney general and the Secretary  
4 that's documented here on September 18th?

5 Q. Yes. Ms. Teramoto, after telling you  
6 that the Attorney General and the --  
7 Secretary Ross spoke, says -- or writes, please --  
8 let me know when you have a minute."

9 Did you follow up with Ms. Teramoto to  
10 have a conversation with her --

11 A. I see.

12 Q. -- after this e-mail?

13 A. I don't recall.

14 Q. Let me show you another document. We'll  
15 mark this as Exhibit 10.

16 (Gore Deposition Exhibit 10 marked for  
17 identification and attached to the  
18 transcript.)

19 BY MR. HO:

20 Q. This is an e-mail to you dated  
21 September 22nd, 2017. Just so the record is  
22 clear, this was produced to us in discovery. The

802

1 electronic version has a file name that's stamped  
2 DOJ 30651, but the document itself does not bear a  
3 Bates number.

4 Mr. Gosre, this is an e-mail to you from  
5 Camille Legore-Traore, correct?

6 A. Legore-Traore is I believe how she says  
7 it, but yes.

8 Q. And it's dated September 22nd, 2017?

9 A. Correct.

10 Q. And this e-mail informs you that James  
11 Uthmeier from the Department of Commerce called to  
12 speak with you, correct?

13 A. That's correct.

14 Q. Okay. Prior to this e-mail, September  
15 22nd, 2017, had you spoken with Mr. Uthmeier about  
16 the citizenship question?

17 A. I don't recall.

18 Q. You and Mr. Uthmeier had been colleagues  
19 at Jones Day, correct?

20 A. Correct.

21 Q. You knew each other from your time there,  
22 correct?

1 A. Yes.

2 Q. Since -- did you socialize with  
3 Mr. Uthmeier?

4 A. Not regularly, no.

5 Q. But at some point, if not regularly, you  
6 socialized with him?

7 A. I might have spent time with him at  
8 events sponsored by the law firm.

9 Q. Between the time that you became a DOJ  
10 employee and the date that you received this  
11 e-mail, September 22nd, 2017, did you have any  
12 other conversations with Mr. Uthmeier?

13 A. Not that I can recall.

14 Q. And at the time Mr. Uthmeier -- of this  
15 e-mail -- at the time of this e-mail, Mr. Uthmeier  
16 worked in the general counsel's office in the  
17 Commerce Department, correct?

18 A. That's correct.

19 Q. To the best of your knowledge,  
20 Mr. Uthmeier does not have any Voting Rights Act  
21 enforcement responsibilities, correct?

22 A. Correct.

1 Q. And to the best of your knowledge,  
2 Mr. Uthmeier does not have any experience  
3 enforcing the Voting Rights Act, correct?

4 A. That is correct as well. Yeah.

5 Q. Did you ever return Mr. Uthmeier's call?

6 A. Yes. I believe I did.

7 Q. Roughly when?

8 A. Sometime around when I received this  
9 message. I can't remember if it was that day or  
10 the following week.

11 Q. Roughly how long did you speak with  
12 Mr. Uthmeier?

13 A. Not particularly long. Maybe 15 or  
14 20 minutes.

15 Q. Did you talk to him about the citizenship  
16 question?

17 A. Yes, among other things.

18 Q. At some point you received a note and a  
19 memo from Mr. Uthmeier concerning the citizenship  
20 question, correct?

21 A. That's correct.

22 Q. Was the note handwritten?



1 A. Yes, it was.

2 Q. How was the note transmitted to you?

3 A. Along with the memo, it was delivered to  
4 my office.

5 Q. When did you receive the note and memo?

6 A. I don't recall exactly.

7 Q. Was it after receiving this phone call to  
8 your office from Mr. Uthmeier on September 22nd,  
9 2017?

10 A. I believe so, yes.

11 Q. Was it before the Department of Justice  
12 sent its letter to the Census Bureau on  
13 December 12th, 2017, requesting the citizenship  
14 question?

15 A. Yes.

16 Q. You showed that note to other people,  
17 right?

18 A. Yes.

19 Q. Who did you show that note to?

20 A. I showed it to -- I know I've shown it to  
21 Kathleen Toomey in the civil rights division as  
22 part of the document collection. And I understand

1     that it was shown to a couple of other people in  
2     the civil division who are responsible for  
3     litigating this case on behalf of the United  
4     States.

5             I don't recall showing it to anyone else.

6             Q.   Do you know if anyone to whom you showed  
7     the note showed it to anyone else?

8             A.   I don't.

9             Q.   Did you ever have any discussions with  
10    anyone about the note?

11            A.   No, I don't believe so.

12            Q.   You just showed it to some people, but  
13    you never discussed it?

14            A.   Well, I showed it to them after receiving  
15    a document request in this litigation and I gave  
16    it to them as part of the collection of documents  
17    responsive to that -- potentially responsive to  
18    that request.

19            I may have had a question with Ben  
20    Aguinaga about it, but I don't recall.

21            Q.   Did the note solicit legal advice from  
22    you?

1 A. No.

2 Q. And you didn't provide legal advice in  
3 response to that note, correct?

4 A. I believe I may have, actually.

5 Q. You testified earlier you weren't  
6 providing legal advice in connection to the  
7 citizenship question, I thought.

8 MR. GARDNER: Objection.  
9 Mischaracterizes the witness' prior testimony.

10 THE WITNESS: I don't believe that was my  
11 testimony.

12 BY MR. HO:

13 Q. Okay. So you think you did provide legal  
14 advice to Mr. Uthmeier in response to the memo?

15 A. Now you've changed the question.

16 Q. Yeah.

17 A. No, I didn't provide legal advice to  
18 Mr. Uthmeier.

19 Q. Did you provide legal advice to the  
20 Department of Commerce in response to the note  
21 from Mr. Uthmeier?

22 A. I did -- I did discuss -- now that you

1 mention it, I did discuss the note with

2 Mr. Uthmeier and Mr. Davidson.

3 Q. Did you provide legal advice to the  
4 Department of Commerce in connection with the note  
5 from Mr. Uthmeier?

6 A. Yes.

7 Q. At this point were you anticipating  
8 litigation over the possibility of including a  
9 citizenship question in the census?

10 A. I'm sorry. Can you say that again?

11 Q. At this point --

12 A. Right.

13 Q. -- when you received the handwritten note  
14 from Mr. Uthmeier, were you anticipating  
15 litigation over the possibility of the inclusion  
16 of the citizenship question on the census?

17 A. Absolutely.

18 Q. Did the -- was the note shared with you  
19 in anticipation of litigation over the citizenship  
20 question?

21 MR. GARDNER: Objection. Lack of  
22 foundation. Calls for speculation.

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1 BY MR. HO:

2 Q. If you know.

3 A. That would be speculating. I don't know.

4 Q. Did the note state one way or the other  
5 whether or not it was prepared in anticipation of  
6 litigation?

7 A. I don't recall that it did.

8 Q. And did the note state one way or the  
9 other whether or not it was requesting legal  
10 advice from you?

11 A. Yes, it did.

12 Q. And your answer is it was requesting  
13 legal advice, the note?

14 A. Yes.

15 Q. Did you -- let me start this again.

16 Did the Department of Justice rely on  
17 that note in drafting its request to the Census  
18 Bureau to include a citizenship question on the  
19 census?

20 MR. GARDNER: Objection. Vague.

21 THE WITNESS: The note contained  
22 information regarding that issue that was

1 considered by the Department of Justice in  
2 drafting its request.

3 BY MR. HO:

4 Q. Does inform -- did -- does any  
5 information contained on that note appear in the  
6 Department of Justice's letter to the Department  
7 of -- to the Census Bureau requesting a  
8 citizenship question on the 2020 census?

9 MR. GARDNER: Objection to the extent  
10 that that calls for the disclosure of information  
11 that may be subject to deliberative process  
12 privilege.

13 To the extent you can answer that  
14 question without divulging that, you may.  
15 Otherwise, I instruct you not to answer.

16 THE WITNESS: Consistent with that  
17 instruction, I can't answer that question.

18 MR. HO: Just so I understand the  
19 position, even if information from that was on  
20 that letter that became public, your position is  
21 that's protected from my question about whether or  
22 not --

1 MR. GARDNER: Your question wasn't  
2 whether it was expressly incorporated by reference  
3 in the letter, at which point I would agree with  
4 you that that would waive the privilege. You just  
5 asked if information in that letter was somehow  
6 used in forming the letter. That is classic  
7 deliberative process protection.

8 MR. HO: I don't think that was my  
9 question, but I'll ask a question that --

10 MR. GARDNER: Ask it again.

11 BY MR. HO:

12 Q. Does information on the handwritten note  
13 from Mr. Uthmeier appear in the Department of  
14 Justice's letter requesting a citizenship question  
15 on the 2020 census questionnaire?

16 MR. GARDNER: Same objection. Same  
17 instruction.

18 THE WITNESS: Consistent with that  
19 instruction, I can't answer.

20 (Gore Deposition Exhibit 11 marked for  
21 identification and attached to the  
22 transcript.)

1 BY MR. HO:

2 Q. This is marked as Exhibit 11. This is an  
3 e-mail to you -- from you to Mr. Herren -- Chris  
4 Herren, sorry -- dated November 1st, 2017, with a  
5 cc to Ben Aguinaga, correct?

6 A. That is correct.

7 Q. Chris Herren is the chief of the voting  
8 section, correct?

9 A. Yes. And a great lawyer.

10 Q. The subject line of your e-mail is,  
11 Confidential and closehold draft letter, correct?

12 A. That's correct.

13 Q. And in your e-mail to Mr. Herren you say  
14 that the draft letter is attached, correct?

15 A. Correct.

16 Q. Did you write the draft letter that is  
17 attached to this e-mail?

18 A. Yes, I did.

19 Q. The draft letter that is attached to this  
20 e-mail is an early draft of the December 12th  
21 letter from the Department of Justice to the  
22 Census Bureau requesting a citizenship question on



1 the 2020 census questionnaire, correct?

2 A. Correct.

3 Q. Is it fair to say that you wrote the  
4 first draft of the letter from the Department of  
5 Justice to the Census Bureau requesting a  
6 citizenship question on the 2020 census  
7 questionnaire?

8 A. Is that a question? I'm sorry. That  
9 sounded like a statement.

10 Q. No. It was a question.

11 A. Okay.

12 Q. Is it fair to say that you wrote the  
13 first draft of the letter from the Department of  
14 Justice to the Census Bureau requesting a  
15 citizenship question on the 2020 census  
16 questionnaire?

17 A. Yes.

18 Q. You write in this e-mail that you  
19 discussed the draft letter with Mr. Herren  
20 yesterday.

21 Would that have been your first  
22 conversation with Mr. Herren about the citizenship

1 question on the census?

2 A. I don't recall.

3 Q. When was your first conversation, if you  
4 recall, with Mr. Herren about the citizenship  
5 question on the census?

6 A. I don't recall.

7 Q. Did you have any conversations with  
8 Mr. Herren about the citizenship question before  
9 you sent this letter to him?

10 A. Yes.

11 Q. How many conversations did you have with  
12 Mr. Herren before you sent the draft of the letter  
13 to him?

14 A. I don't recall exactly. It would have  
15 been a few.

16 Q. More than one?

17 A. Yes.

18 Q. Days before you sent him the letter?  
19 Weeks before? Months before? Do you have a  
20 recollection about approximate time?

21 A. I don't have an exact recollection. I  
22 would say in the days before I sent him the

1 letter.

2 Q. Were those conversations in person or by  
3 phone?

4 A. I can recall conversations by phone. And  
5 there may have been conversations in person. I  
6 can't recall.

7 Q. Did you have more than five conversations  
8 with Mr. Herren about the citizenship question?

9 A. At what time?

10 Q. Before you sent him the draft letter.

11 A. Probably not.

12 Q. So more than one but fewer than five  
13 conversations about the citizenship question  
14 before you sent him the draft letter?

15 A. Sounds about right.

16 Q. You describe this as confidential and  
17 closehold.

18 What do you mean by confidential and  
19 closehold?

20 A. I meant that Mr. Herren should review the  
21 letter and this was not for broad dissemination,  
22 as it represented a draft. And I had asked him to

1 take a look at it.

2 Q. When you say confidential and closehold,  
3 does that mean that Mr. Herren was not permitted  
4 to share the draft letter with anyone?

5 A. No. It meant that if he was interested  
6 in sharing the draft letter with someone, he could  
7 ask me if he was allowed to do that.

8 Q. So your understanding was that Mr. Herren  
9 should ask you before sharing any drafts of the  
10 letter with anyone?

11 A. I believe my understanding was that he  
12 should communicate with me if he wanted to share  
13 this particular draft with anyone.

14 Q. Did Mr. Herren ever communicate with you  
15 that he wanted to share the draft letter with  
16 anyone?

17 A. I can't recall.

18 Q. Do you know whether or not Mr. Herren  
19 shared this draft letter with anyone?

20 A. I don't.

21 Q. Do you know if Mr. Herren discussed the  
22 issues in the draft letter with anyone?

1           A. Whether he discussed the issues in the  
2 draft letter? At what time?

3           Q. Around the time that you sent the copy of  
4 the draft letter to him.

5           A. Well, I know he discussed them with me.  
6 Other than that, I don't know.

7           Q. Do you know if Mr. Herren discussed the  
8 issues raised in the draft letter with any voting  
9 section personnel?

10          A. I don't.

11          Q. Why did you consider this letter to be  
12 confidential and closehold?

13          A. I considered it to be confidential and  
14 closehold because it was a draft and related to an  
15 issue that was important to people in the  
16 department.

17          Q. Did you not want it to become public  
18 information that the Department of Justice at this  
19 point was drafting a letter to request a  
20 citizenship question on the 2020 census  
21 questionnaire?

22          MR. GARDNER: Objection to form.

1 THE WITNESS: I never want any of our  
2 drafts to become public information unless  
3 required by legal process because I believe that  
4 the Department of Justice should facilitate robust  
5 and open conversation and deliberations at all  
6 level before a decision is made.

7 BY MR. HO:

8 Q. I didn't ask if you wanted the draft to  
9 not become public. I just asked if you wanted the  
10 fact that the Department of Justice was drafting a  
11 letter to request a citizenship question on the  
12 2020 census questionnaire, if you wanted that fact  
13 to remain non-public at this time.

14 A. I would have preferred that that fact  
15 remain non-public because the final letter hadn't  
16 been issued and no final decision had yet been  
17 made about it.

18 (Gore Deposition Exhibit 12 marked for  
19 identification and attached to the  
20 transcript.)

21 BY MR. HO:

22 Q. I'm going to show you a document. We've

1 marked this as Exhibit 12. This has Bates number  
2 DOJ 00003740. It was produced to us in discovery.  
3 The top e-mail is from Ben Aguinaga on November  
4 3rd to Bethany Pickett.

5 Here, Mr. Aguinaga is forwarding the  
6 e-mail that you sent to Mr. Herren with the draft  
7 letter to Bethany Pickett, correct?

8 A. That appears to be correct, yes.

9 Q. Did you authorize Mr. Aguinaga to send  
10 the draft letter that you had sent to Mr. -Herren  
11 to forward that to Bethany Pickett?

12 A. Yes.

13 Q. Now, at the time, Mr. Aguinaga and  
14 Ms. Pickett both worked with you in the front  
15 office of the civil rights division, correct?

16 A. That's correct.

17 Q. Both of them were political hires rather  
18 than career staff, correct?

19 A. Correct.

20 Q. And you hired both Mr. Aguinaga and  
21 Ms. Pickett, correct?

22 A. No, I did not.

1 Q. Who hired Mr. Aguinaga and Ms. Pickett?

2 A. I believe it was my predecessor, Tom  
3 Wheeler.

4 Q. Both of them had been law clerks for  
5 Judge Edith Jones on the Fifth Circuit, correct?

6 A. That's correct.

7 Q. Just like Mr. Shumate, correct?

8 A. I don't know.

9 Q. Both of them graduated from law school in  
10 2015 or more recently, correct?

11 A. Sounds about right.

12 Q. Before coming to the civil rights  
13 division, neither Mr. Aguinaga nor Ms. Pickett had  
14 any experience as counsel in cases under the  
15 Voting Rights Act, correct?

16 MR. GARDNER: Object to lack of  
17 foundation.

18 THE WITNESS: I don't know.

19 BY MR. HO:

20 Q. You're not aware of any experience that  
21 Mr. Aguinaga or Ms. Pickett had as counsel in  
22 Voting Rights Act cases prior to them coming to



1 the civil rights division, correct?

2 A. That's correct.

3 Q. You're not aware of any experience that  
4 either Mr. Aguinaga or Ms. Pickett had assessing  
5 the reliability of CVAP data for purposes of VRA  
6 enforcement, correct?

7 A. That's correct.

8 (Gore Deposition Exhibit 13 marked for  
9 identification and attached to the  
10 transcript.)

11 BY MR. HO:

12 Q. I'll give you a document marked as  
13 Exhibit 13. This is an e-mail from Ms. Pickett to  
14 you also on November 3rd, 2017, correct?

15 A. Appears to be, yes.

16 Q. Ms. Pickett writes to you, "I have  
17 attached the letter that we discussed yesterday.  
18 I would be happy to discuss this further. Please  
19 let me know if you have any questions regarding  
20 any comments and edits."

21 It's accurate to say that Ms. Pickett  
22 offered comments and edits to the draft of the

1 letter requesting a citizenship question on the  
2 census that you had previously sent to Mr. Herren,  
3 correct?

4 A. Correct.

5 Q. What were the substance of the  
6 conversations that you had had with Ms. Pickett  
7 about that letter?

8 MR. GARDNER: Objection. Calls for  
9 information subject to deliberative process  
10 privilege. I instruct the witness not to answer.

11 THE WITNESS: Consistent with that  
12 instruction, I can't answer.

13 BY MR. HO:

14 Q. What were the substance of her edits to  
15 the draft of the letter?

16 MR. GARDNER: Same objection. Same  
17 instruction.

18 THE WITNESS: Consistent with that  
19 instruction, I can't answer.

20 BY MR. HO:

21 Q. Other than Ms. Pickett, Mr. Aguinaga, and  
22 Mr. Herren, did you solicit input on the draft

1 letter from anyone else within the civil rights  
2 division?

3 A. Not that I can recall.

4 Q. Other than Ms. Pickett, Mr. Aguinaga, and  
5 Mr. Herren, did you receive input on the draft  
6 letter from anyone else within the civil rights  
7 division?

8 A. Not that I can recall.

9 Q. Sometime after you wrote the first draft  
10 of this e-mail, you had a conversation with Peter  
11 Davidson at the Department of Commerce, correct?

12 A. Yes. That would be correct.

13 Q. So sometime in November of 2017, you had  
14 conversation -- you had a conversation with  
15 Mr. Davidson about the citizenship question,  
16 correct?

17 A. Yes. At some point I would have.

18 Q. How many conversations did you have with  
19 Mr. Davidson in November of 2017 about the  
20 citizenship question?

21 A. I don't recall exactly how many.

22 Q. What, if anything, did you communicate to

1 Mr. Davidson about the Department of Justice's  
2 process for requesting a citizenship question on  
3 the census during November of 2017?

4 MR. GARDNER: Objection. Vague. Also  
5 objection -- to the extent it calls for  
6 information subject to deliberative process  
7 privilege, I instruct you not to answer. To the  
8 extent you can answer that without divulging such  
9 information, you may answer.

10 THE WITNESS: Consistent with that  
11 instruction, I can't answer.

12 (Gore Deposition Exhibit 14 marked for  
13 identification and attached to the  
14 transcript.)

15 BY MR. HO:

16 Q. I show you a document that's been marked  
17 as Exhibit 14. It's an e-mail exchange between  
18 you, Robert Troester, T-r-o-e-s-t-e-r, and  
19 Rachael, spelled R-a-c-h-a-e-l, Tucker.

20 The top e-mail on the thread is  
21 November 30th, 2017. This was produced to us in  
22 discovery. The electronic version has DOJ 14798

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1 on it, although the hard copy doesn't have that  
2 Bates number.

3 It we look at the bottom of this page,  
4 the first e-mail on this thread is from you to  
5 Ms. Tucker and Mr. Troester on November 27th,  
6 2017, correct?

7 A. That's correct. Except that he  
8 pronounces his last name Troester.

9 Q. Troester. Thank you.

10 You had a conversation on this day, the  
11 same day, with Mr. Davidson, correct?

12 A. On November 27th?

13 Q. 2017. Correct?

14 A. I don't recall that specifically, but  
15 it's certainly possible.

16 Q. Now, at this time, Ms. Tucker was counsel  
17 in the front office of the attorney general,  
18 correct?

19 A. That's correct.

20 Q. And Mr. Troester was associate deputy  
21 attorney general, correct?

22 A. That's my understanding, yes.

1 Q. Okay. Now, neither Ms. Tucker nor  
2 Ms. [sic] Troester, as far as you're aware, had  
3 any experience as counsel in Voting Rights Act  
4 cases, correct?

5 A. Mr. Troester -- yes. That's correct.

6 Q. What about Ms. Tucker?

7 A. Also correct. You called him  
8 Ms. Troester, so -- sorry.

9 Q. Thank you.

10 A. But, yes, I was not aware that either had  
11 any enforcement responsibility or experience with  
12 respect to the Voting Rights Act.

13 Q. And as far as you're aware, neither of  
14 them had any experience assessing the reliability  
15 of CVAP data used in Voting Rights Act litigation,  
16 correct?

17 A. Correct.

18 Q. Ms. Tucker and Mr. Troester were both  
19 political appointees in the Department of Justice  
20 at this time, correct?

21 A. That's correct for Ms. Tucker. I believe  
22 Mr. Troester was a career employee on detail to

1 the office of deputy attorney general and had  
2 served a long career in the Department of Justice  
3 as an assistant United States attorney, and maybe  
4 even more than once as the acting United States  
5 attorney in his home state of Oklahoma.

6 Q. In your e-mail to them on November 27th,  
7 you wrote, "Attached please find the near final  
8 draft of the letter to census on the citizenship  
9 issue we discussed a couple of weeks ago."

10 So you had discussed the citizenship  
11 issue with Ms. Tucker and Mr. Troester a few weeks  
12 before the date of this e-mail, November 27th,  
13 2017, correct?

14 A. Correct.

15 Q. When were your first conversations with  
16 either Ms. Tucker or Mr. Troester about the  
17 citizenship question?

18 A. I don't recall specifically when they  
19 were. Probably in September of 2017 or early  
20 October. And I had a handful to several  
21 conversations with each of them about that issue.

22 At the time, Ms. Tucker was responsible

1 for the civil rights division portfolio in the  
2 Office of Attorney General and Mr. Troester was  
3 responsible for the civil rights division  
4 portfolio in the Office of the Deputy Attorney  
5 General. So I had many conversations with them  
6 over time about issues related to the civil rights  
7 division.

8 Q. You described the draft of the letter as  
9 a near final draft, correct?

10 A. Correct.

11 Q. So fair to say that on November 27th,  
12 2017, a decision had already been made to request  
13 a citizenship question on the census?

14 A. No, I don't think that's fair to say.

15 Q. Okay. Ms. Tucker and Mr. Troester both  
16 offered you edits to the letter, correct?

17 A. I believe that's correct.

18 (Gore Deposition Exhibit 15 marked for  
19 identification and attached to the  
20 transcript.)

21 BY MR. HO:

22 Q. This is a document marked as Exhibit 15.



1 (Gore Deposition Exhibit 16 marked for  
2 identification and attached to the  
3 transcript.)

4 BY MR. HO:

5 Q. Exhibit 16 is what I'm handing to you  
6 now. Another e-mail chain between you and  
7 Mr. Gary. The top e-mail on the thread is dated  
8 December 8th, 2017. The subject line of this is,  
9 Request for citizenship information. December 8  
10 red-line edits, 002. Is that right?

11 A. Appears to be right, yeah.

12 Q. When you say leadership's final changes  
13 in this e-mail in the second line -- you write,  
14 "Attached is a red-line of a letter with  
15 leadership's final changes" -- you're referring to  
16 additional edits that you received from Ms. Tucker  
17 and Mr. Troester, correct?

18 A. Possibly. I don't know exactly which  
19 edits I'm referring to here.

20 Q. Well, what were the final edits from  
21 leadership? I mean, who was leadership? When you  
22 wrote "leadership" here, who were you referring

1 to?

2 A. I would have been referring to the  
3 leadership offices at the Department of Justice,  
4 which may have included the Office of Attorney  
5 General, the Office of Deputy Attorney General,  
6 and the Office of Associate Attorney General.

7 Q. Is there anyone that you can think of who  
8 was giving you edits in the last few days before  
9 this letter was sent from any of those offices  
10 other than Ms. Tucker and Mr. Troester?

11 A. Not that I can specifically recall.

12 Q. So fair to say, when you're referring to  
13 leadership's final changes, you're referring to,  
14 to the best of your recollection, some edits from  
15 Ms. Tucker and Mr. Troester, correct?

16 MR. GARDNER: Objection.  
17 Mischaracterizes the witness' prior testimony.

18 THE WITNESS: Yeah, I don't recall  
19 whether they came from Ms. Tucker, Mr. Troester,  
20 or somebody else.

21 BY MR. HO:

22 Q. You write, "With these changes, we are

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1 authorized to send. Sending on Monday is fine."

2 Did I read that correctly?

3 A. That's correct.

4 Q. Okay. When you say, "authorized to  
5 send," who provided authorization to send the  
6 letter with those changes?

7 A. I don't recall specifically who  
8 communicated that. It would have come from  
9 someone in the leadership office.

10 Q. Was it Ms. Tucker or Mr. Troester?

11 A. Again, I don't recall specifically who it  
12 was.

13 Q. Was it Attorney General Sessions who gave  
14 your authorization to send the letter with these  
15 edits?

16 MR. GARDNER: Objection. Asked and  
17 answered.

18 THE WITNESS: Again, I don't recall  
19 exactly who it was.

20 BY MR. HO:

21 Q. When you say, "With these changes we are  
22 authorized to send," on December 8th, 2017, when

1 you wrote that, a decision had been made as of  
2 December 8th, 2017, to send the citizenship  
3 question -- the request for the citizenship  
4 question as long as it had these changes, correct?

5 A. No, I don't think that's correct.

6 Q. You wrote, "With these changes, we are  
7 authorized to send."

8 A. That's correct.

9 Q. So as soon as you made those changes to  
10 that letter, you had authorization to send that  
11 letter, correct?

12 A. I believe we might have had authorization  
13 to send, but it would have been my practice to  
14 check in one last time before the letter was sent.

15 Q. Okay. You didn't have reason to believe  
16 that you weren't authorized to send the letter  
17 once you had made those changes as of  
18 December 8th, 2017, right, Mr. Gore?

19 A. I don't recall what I thought or didn't  
20 think on December 8th of 2017.

21 Q. Okay. You didn't say in this e-mail to  
22 Mr. Gary that you were going to check in again

1 after you made these changes, did you?

2 MR. GARDNER: Objection.

3 Mischaracterizes the document.

4 THE WITNESS: I did not use those words  
5 in that e-mail.

6 BY MR. HO:

7 Q. You didn't tell Mr. Gary in this e-mail  
8 that, after these changes were made, you would  
9 have to check in with leadership one more time  
10 before sending it, right?

11 A. Again, I did not use those words in that  
12 e-mail, but that's standard practice, certainly my  
13 standard practice, and I believe the standard  
14 practice of others at the Department of Justice.

15 Q. You sent this e-mail on Friday,  
16 December 8th, which means Monday would have been  
17 Monday, December 11th, correct?

18 A. That's correct.

19 Q. And you wrote that sending on Monday,  
20 which would have been December 11th, would be  
21 fine, correct?

22 A. Correct. And what I was -- I believe I

1 was conveying there is that Mr. Gary didn't need  
2 to work late on a Friday night during the holiday  
3 season to send the letter out.

4 Q. So just so I understand the process here,  
5 you had -- you first had communications about the  
6 issue of a citizenship question sometime around  
7 Labor Day of 2017, correct?

8 A. Give or take, yes, that's correct.

9 Q. You drafted the initial draft of the  
10 letter to request the citizenship question  
11 sometime around the end of October or early  
12 November of 2017, correct?

13 A. Correct.

14 Q. The conversations to add the citizenship  
15 question with the Department of Commerce were not  
16 initiated by the civil rights division, correct?

17 A. Correct.

18 Q. And they were not initiated by the  
19 Department of Justice, correct?

20 A. That's my working understanding.

21 Q. Around the time that you wrote the first  
22 draft of this letter, you received input from

1 three individuals: Mr. Herren, Ms. Pickett, and  
2 Mr. Gary, correct?

3 A. Yes. And I may have received input from  
4 others as well.

5 Q. Around the time of the first draft of the  
6 letter in early November of 2017, who else did you  
7 receive input from other than Mr. Herren,  
8 Ms. Pickett, and Mr. Gary?

9 A. Mr. Aguinaga would have provided -- may  
10 have provided some input. I would have had  
11 discussions on -- regarding the letter generally  
12 with Patrick Hovakimian, who at the time was  
13 detailed to the Office of Associate Attorney  
14 General, and with Jesse Panuccio in the Office of  
15 the Associate Attorney General.

16 And I had various conversations with  
17 others at various times throughout this process.  
18 But I don't recall who else I would have spoken to  
19 at that particular moment in time, around  
20 November 1st of 2017.

21 Q. Okay. Around November 1st of 2017, the  
22 only career staff in the civil rights division

1 from whom you received input on the letter was  
2 from Mr. Herren, correct?

3 A. That's correct.

4 Q. After that period of early November  
5 of 2017 when you had drafted the initial draft of  
6 that letter, Mr. Herren gave you some edits,  
7 correct?

8 A. That's correct.

9 Q. After that time, did you receive any  
10 further edits from Mr. Herren to the draft letter?

11 A. I don't recall one way or the other.

12 Q. So you have no recollection of receiving  
13 input from career civil rights division staff on  
14 the letter requesting a citizenship question other  
15 than that one occasion in early November around  
16 the time of the first draft from Mr. Herren,  
17 correct?

18 A. I believe that's correct. Yeah.

19 Q. You continued to revise the letter after  
20 early November of 2017 with input from different  
21 people. But after that first round of edits from  
22 Mr. Herren, you received no subsequent edits from



1 people who were career staff in the civil rights  
2 division, correct?

3 MR. GARDNER: Objection. Compound.

4 THE WITNESS: To the extent I understand  
5 your question, I believe that's correct.

6 BY MR. HO:

7 Q. During this period when you were revising  
8 the letter to request a citizenship question, you  
9 had multiple conversations with legal staff at the  
10 Department of Commerce, correct?

11 A. Yes.

12 Q. And the edits that you were receiving to  
13 the letter from other DOJ personnel included  
14 political appointees in the front office of the  
15 Department of Justice and in the front office of  
16 the civil rights division, correct?

17 A. I -- certainly that's correct with  
18 respect to the leadership offices at the  
19 Department of Justice. I can't remember if I was  
20 receiving edits from the front office of the civil  
21 rights division at that time after receiving the  
22 edits from Ms. Pickett.

1 Q. Who made the final decision to send the  
2 letter requesting the citizenship question be  
3 added to the 2020 census questionnaire?

4 A. I'm not sure I know. And I can't recall  
5 who communicated the final decision to me.

6 Q. The letter was ultimately sent on  
7 December 12th, 2017 --

8 A. Correct.

9 Q. -- correct?

10 A. Correct.

11 Q. Who gave the final signoff to put that  
12 letter in the mail?

13 MR. GARDNER: Objection. Asked and  
14 answered.

15 THE WITNESS: I don't recall who gave the  
16 final signoff.

17 BY MR. HO:

18 Q. Was it you?

19 A. No, I don't believe I would have given  
20 the final signoff. But maybe. I guess it depends  
21 on what you're asking. Like, who told Art Gary he  
22 could press "send" on the e-mail? I don't

1 understand your question.

2 Q. Yes, that's my question.

3 A. I don't know.

4 Q. You don't know whether or not you did?

5 A. I don't recall whether it was me or

6 somebody else.

7 Q. All right.

8 A. It's possible it could have been me.

9 (Gore Deposition Exhibit 17 marked for  
10 identification and attached to the  
11 transcript.)

12 BY MR. HO:

13 Q. I'm going to show you what's been marked  
14 as Exhibit 17. This is a document in the  
15 administrative record, the first page of which has  
16 the number 000663. This is a letter stamped  
17 December 12th, 2017, from Arthur Gary at the  
18 Department of Justice addressed to Ron Jarmin at  
19 the Census Bureau, correct?

20 A. Yes. It appears to be.

21 Q. And this is the letter we've been talking  
22 about in which the Department of Justice

1 from either Ms. Tucker or Mr. Troester, correct?

2 A. Correct.

3 Q. And your recollection is you received  
4 final authorization to send that letter either on  
5 Monday, December 11th or on Tuesday, December  
6 12th, correct?

7 A. That's my best recollection -- well,  
8 although I may be wrong about that, now that I  
9 think about that. I can't remember the date the  
10 letter was sent. And I don't believe -- so it  
11 could have been a couple of days later. I don't  
12 remember exactly.

13 Q. Well, the letter is stamped  
14 December 12th, 2017.

15 A. Okay.

16 Q. That's a Tuesday.

17 A. Okay.

18 Q. You said that you -- you testified that  
19 you had spoken with either Ms. Tucker or  
20 Mr. Troester on either Monday or Tuesday, December  
21 11th or December 12th.

22 So it was when you had a conversation

1 with them, with one of them, on either the 11th or  
2 the 12th, that you received final authorization  
3 for the letter to go out, correct?

4 A. I believe that's correct.

5 Q. So one of them, either Ms. Tucker or  
6 Mr. Troester, gave final authorization to send the  
7 letter, and it was either on December 11th or on  
8 December 12th, correct?

9 A. I would say that one of them communicated  
10 final authorization on one of those dates, and I  
11 imagine it was the 12th, since that's the date the  
12 letter went out.

13 Q. If one of them, as you say, communicated  
14 final authorization, where did that final  
15 authorization come from?

16 MR. GARDNER: Objection. Vague.

17 THE WITNESS: I believe it would have  
18 come from the attorney general.

19 BY MR. HO:

20 Q. Okay. Let's talk about Exhibit 17, the  
21 December 12th, 2017, letter that's in front of  
22 you.

1 A. I'm just going to finish reading it.

2 Q. Well, you've looked at the first page of  
3 this letter, right, Mr. Gore?

4 A. Yes. Ever. Yes.

5 Q. From looking at the first page of this  
6 letter, does it refresh your recollection that  
7 this is the letter that the Department of Justice  
8 sent to the Census Bureau to request a citizenship  
9 question on the 2020 census?

10 A. Again, if I can finish reading the  
11 letter, I can verify whether I believe it's the  
12 same letter.

13 Q. So the first -- reading the first page  
14 doesn't refresh your recollection as to whether or  
15 not this is the letter?

16 A. It appears to be the letter.

17 Q. Okay. The letter signed by Mr. Gary  
18 represents the Department of Justice's final  
19 decision and statement of position with respect to  
20 the issue of the citizenship question on the  
21 census, correct?

22 A. Yes.

1 Q. And this letter represents the views of  
2 the Department of Justice, correct?

3 A. Correct.

4 Q. And Attorney General Sessions agrees with  
5 the views expressed in this letter, correct?

6 MR. GARDNER: Objection. Calls for  
7 speculation. Lack of foundation.

8 THE WITNESS: I can't speak for what  
9 Attorney General Sessions believes or does not  
10 believe.

11 BY MR. HO:

12 Q. You believe that the attorney general  
13 agrees with the views expressed in this letter,  
14 correct?

15 MR. GARDNER: Objection. Lack of  
16 foundation. Calls for speculation.

17 THE WITNESS: I would be speculating. I  
18 don't think I can answer that question.

19 BY MR. HO:

20 Q. Mr. Gore, can you look at what we marked  
21 earlier as Exhibit 12 -- I'm sorry, Exhibit 2. It  
22 was your testimony in Congress.

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1 A. Uh-huh.

2 Q. Please turn to page 23.

3 A. Sure.

4 Q. Sorry. I think I meant page 24. Oh, no,  
5 no. I'm sorry. I had it right. Page 23.

6 The fourth paragraph down here, there's a  
7 question from Member Lynch: "This is Attorney  
8 General Sessions you're talking about."

9 Your answer is, "It represents the view  
10 of the department, so I believe the attorney  
11 general agrees with that view. Yes."

12 That was your testimony in Congress,  
13 correct?

14 A. Yes.

15 Q. And you gave truthful testimony that day,  
16 correct?

17 A. I did.

18 Q. Are there any reasons that the Department  
19 of Justice has for wanting a citizenship question  
20 on the census that were communicated to the  
21 Department of Commerce but are not contained in  
22 this letter?



1 MR. GARDNER: To the extent you're asking  
2 for a yes or no, you may answer that question.

3 THE WITNESS: I don't know.

4 BY MR. HO:

5 Q. Are there any -- just to be clear, there  
6 are no reasons that you're aware of that the  
7 Department of Justice wants a citizenship question  
8 on the 2020 census that are not reflected in this  
9 letter, correct?

10 A. That's correct. I'm aware of no such  
11 reasons.

12 Q. This letter is addressed to Dr. Ron  
13 Jarmin, correct?

14 A. Yes, it is.

15 Q. And Dr. Jarmin is the acting director of  
16 the Census Bureau, correct?

17 A. That's my understanding. Yes.

18 Q. Why is the letter addressed to him?

19 A. Because he is the acting director of the  
20 Census Bureau.

21 Q. Why isn't it addressed to someone from  
22 the Department of Commerce?

1           A. I believe that you showed me a letter  
2 earlier that was sent from the Department of  
3 Justice to then Acting Director Thompson. And so  
4 I understand it to be the practice, when the  
5 Department of Justice wants additional questions  
6 or information collected by the Census Bureau,  
7 either through the census or the ACS or some other  
8 instrument, to address that request to the head or  
9 acting head of the Census Bureau.

10           Q. You're aware that Dr. Jarmin has worked  
11 at the Census Bureau for 25 years?

12           A. I'm not aware of that, no.

13           Q. Okay. You're aware that Dr. Jarmin has a  
14 Ph.D. in economics?

15           A. I take from his title that he has a Ph.D.  
16 in something. I don't know what it's in.

17           Q. Who do you think knows more about the  
18 accuracy of various forms of CVAP data, Dr. Jarmin  
19 or you?

20           MR. GARDNER: Objection. Calls for  
21 speculation. Lack of foundation.

22           THE WITNESS: I have no idea.

1 BY MR. HO:

2 Q. You have no idea whether or not the  
3 director of the Census Bureau knows more about the  
4 accuracy of various forms of CVAP data than you  
5 do?

6 MR. GARDNER: Objection. Calls for  
7 speculation. Lack of foundation.

8 THE WITNESS: Again, I don't know  
9 anything about Mr. Jarmin -- Dr. Jarmin's  
10 background or the work he's done at the Census  
11 Bureau. So I have no basis to answer that  
12 question.

13 BY MR. HO:

14 Q. Do you think that you know more about the  
15 accuracy of various forms of CVAP data than the  
16 professionals at the Census Bureau?

17 MR. GARDNER: Objection. Calls for  
18 speculation. Lack of foundation.

19 THE WITNESS: Again, I don't know what  
20 the professionals at the Census Bureau know or  
21 don't know.

22

1 BY MR. HO:

2 Q. If the professionals of the Census Bureau  
3 told you that a particular form of CVAP data were  
4 the most accurate form of CVAP data at the census  
5 block level, would you trust their judgment?

6 MR. GARDNER: Objection. Calls for a  
7 hypothetical.

8 THE WITNESS: Again, that calls for a  
9 hypothetical, and I would want to know more  
10 information about why they reached that decision  
11 or that judgment and what other information were  
12 available in making that judgment.

13 BY MR. HO:

14 Q. Do you have any background in statistics,  
15 Mr. Gore?

16 A. No.

17 Q. No graduate degree in survey -- I'm  
18 sorry, in anything quantitative?

19 A. No.

20 Q. Any experience collecting survey data?

21 A. I think I did a survey collection in  
22 college. But other than that, no.

1 Q. Any experience assessing the statistical  
2 validity of survey data?

3 A. No.

4 Q. You know that people in the Census Bureau  
5 do have a lot of experience assessing the  
6 statistical validity of survey data, right?

7 A. I imagine that there are people in the  
8 Census Bureau who have that expertise and  
9 experience. I don't know whether Dr. Jarmin or  
10 anyone else in particular does. And I couldn't  
11 identify anyone at the Census Bureau who has that  
12 expertise.

13 Q. But you would expect that there are  
14 people in the Census Bureau with expertise in  
15 assessing the validity of various forms of survey  
16 data, wouldn't you, Mr. Gore?

17 A. I would certainly hope so.

18 Q. And you don't have any such expertise,  
19 right?

20 A. That's correct.

21 Q. Okay. Prior to this letter, in the  
22 entire 53-year history of the Voting Rights Act,

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1 the Department of Justice had never requested a  
2 citizenship question on the decennial census  
3 questionnaire that's sent to every household in  
4 the United States, correct?

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 THE WITNESS: That is correct. To my  
8 knowledge.

9 BY MR. HO:

10 Q. The first page of this letter, in the  
11 first paragraph, the second-to-last sentence  
12 reads, "To fully enforce those requirements, the  
13 department needs a reliable calculation of citizen  
14 voting age population in localities where voting  
15 rights violations are alleged or suspected. As  
16 demonstrated below, the decennial census  
17 questionnaire is the most appropriate vehicle for  
18 collecting that data and reinstating a question on  
19 citizenship will best enable the department to  
20 protect all American citizens' voting rights under  
21 Section 2."

22 It's the position of the Department of

1 Justice that the decennial census questionnaire is  
2 the most appropriate vehicle for collecting CVAP  
3 data for purposes of VRA enforcement, correct?

4 A. Yes. And -- I think the letter speaks  
5 for itself. But yes, that's the position.

6 Q. And the letter purports to establish why  
7 the decennial census questionnaire is the most  
8 appropriate vehicle for collecting CVAP data for  
9 purposes of VRA enforcement, correct?

10 A. Correct.

11 Q. You testified in Congress that your  
12 belief is that the decennial census questionnaire  
13 is the most appropriate vehicle for collecting  
14 CVAP data for purposes of VRA enforcement,  
15 correct?

16 A. I believe I did. Yes.

17 Q. Let's look at page 2 of the Gary letter.  
18 That's what I'm going to refer to as shorthand,  
19 this request, Exhibit 17.

20 A. Okay.

21 Q. So the second paragraph on page 2, the  
22 second sentence reads -- it's about four lines

1 down -- "From 1970 through the 2000 census, the  
2 Census Bureau collected citizen" -- I'm sorry.

3 "From 1970 to 2000, the Census Bureau  
4 included a citizenship question on the so-called  
5 long-form questionnaire that it sent to  
6 approximately one in every six households during  
7 each decennial census."

8 To your understanding, is it accurate to  
9 say the from the 1970 through the 2000 censuses,  
10 the Census Bureau collected citizenship  
11 information through the census long form?

12 A. That's my understanding.

13 Q. And the long form was not sent to every  
14 household in the United States, correct?

15 A. That's my understanding.

16 Q. The long form was sent to a sample of  
17 households in the United States, correct?

18 A. That appears to be correct.

19 Q. And because the long form was sent only  
20 to a sample of households, the citizenship data  
21 that the Census Bureau published based on  
22 long-form responses were statistical estimates,



1 way?

2 A. No. That's fine.

3 Q. So you agree with me that, if you take a  
4 survey sample and you try to derive generalizable  
5 data from that survey sample, that that  
6 generalized data would be a statistical estimate,  
7 correct?

8 A. Sure.

9 Q. Okay. So you understand that citizenship  
10 data derived from the long form was a statistical  
11 estimate, right, Mr. Gore?

12 A. What I'm trying to convey to you -- let  
13 me go straight to the heart of the matter. I'm  
14 not sure how the Census Bureau reported this  
15 citizenship data in these years. I haven't seen  
16 it, so I don't know.

17 Q. My question wasn't about the how the  
18 Census Bureau reported it. My question was --

19 A. I think that was your question. Your  
20 question was the Census Bureau reported it in a  
21 particular way. And I don't know that.

22 Q. My question was, you understand that

1 citizenship data derived from the long form would  
2 be a statistical estimate, correct?

3 A. I believe that to be correct.

4 Q. Okay. The last sentence in the second  
5 paragraph reads, "For years, the department used  
6 the data collected in response to that question in  
7 assessing compliance with Section 2 and in  
8 litigation to enforce Section 2's protections  
9 against racial discrimination in voting."

10 Where the letter says, "that question,"  
11 it's referring to the citizenship question on the  
12 long form, correct?

13 A. Yes. That appears to be correct.

14 Q. Okay. So for years, the Department of  
15 Justice relied on citizenship data collected  
16 through the census long form for purposes of VRA  
17 enforcement, correct?

18 A. That's my understanding. Yes.

19 Q. And after the long form was discontinued,  
20 the Department of Justice began relying on  
21 citizenship data collected through the ACS for  
22 purposes of VRA enforcement, correct?

1 A. Correct.

2 Q. And -- so it would be accurate to say  
3 that even when there was a citizenship question on  
4 the census long form, the Department of Justice,  
5 when it was using citizenship data for purposes of  
6 VRA enforcement, it was using data that were  
7 statistical estimates based on a sample, correct?

8 A. I believe that's correct, if I follow  
9 your question.

10 Q. So it's accurate to say that the  
11 Department of Justice, for as long as it's been  
12 enforcing the Voting Rights Act, when it's needed  
13 citizenship data, it has always relied on  
14 statistical estimates rather than hard count data,  
15 correct?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 THE WITNESS: To the best of my  
19 knowledge, I think that's correct.

20 BY MR. HO:

21 Q. You're not aware of any period of time in  
22 which the Department of Justice had access to hard

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1 count citizenship data for purposes of VRA

2 enforcement, are you, Mr. Gore?

3 A. I'm not aware of that, no.

4 Q. Now, you're aware the ACS is sent to  
5 about 2 percent of households in the United States  
6 every year, right?

7 A. Sounds about right.

8 Q. And you're aware that the Census Bureau  
9 produces different estimates based on the ACS in  
10 the form of one-year ACS estimates and five-year  
11 ACS estimates, right, Mr. Gore?

12 A. That's correct. I think they have  
13 three-year ACS estimates as well.

14 Q. The three-year ACS estimates have been  
15 discontinued, right, Mr. Gore?

16 A. That could be. I don't know.

17 Q. You don't know one way or the other if --

18 A. I don't --

19 Q. -- the three-year estimates still exist?

20 A. I'm aware that they existed at one time.

21 Q. One-year ACS estimates are statistical  
22 estimates based on a single year of ACS survey

1 responses, correct?

2 A. That's my understanding.

3 Q. And five-year ACS estimates are  
4 statistical estimates that are based on ACS  
5 responses that are aggregated from a consecutive  
6 five-year period, correct?

7 A. It's my understanding. Yes.

8 Q. As of the date of the Gary letter, you  
9 understood the difference between one-year and  
10 five-year ACS estimates, right?

11 A. Yes.

12 Q. ACS one-year estimates are intended for  
13 use -- let me start that again.

14 The Census Bureau intends that ACS  
15 one-year estimates be used for areas with a  
16 population larger than 65,000, right?

17 A. I think that's right.

18 Q. Okay. Let me show you a document. This  
19 is a screenshot from the Census Bureau website.  
20 We'll mark it as Exhibit 18.

21

22

1 (Gore Deposition Exhibit 18 marked for  
2 identification and attached to the  
3 transcript.)

4 BY MR. HO:

5 Q. It's a screenshot from the Census Bureau  
6 website entitled, American Community Survey (ACS):  
7 When to use one-year, three-year, or five-year  
8 estimates.

9 Do you see this table titled,  
10 Distinguishing features of ACS one-year, one-year  
11 supplemental, three-year, and five-year estimates,  
12 Mr. Gore?

13 A. I do, yes.

14 Q. And the far left-hand column has  
15 information about one-year estimates, correct?

16 A. Correct.

17 Q. And do you see in the third row of that  
18 table, second depending on whether you include the  
19 header, that the Census Bureau states that  
20 one-year estimates are data for areas with  
21 populations of 65,000-plus?

22 A. Yes, I see that.

1 Q. So that comports with your understanding,  
2 right, that one-year ACS estimates are intended  
3 for use only in areas with a population larger  
4 than 65,000, correct?

5 A. Yes, that's correct.

6 Q. And did you understand that one-year ACS  
7 estimates were intended for use in areas with a  
8 population over 65,000 as of the date of the Gary  
9 letter?

10 A. Yes.

11 Q. The far right-hand column of the table  
12 has information on five-year ACS estimates. Do  
13 you see that?

14 A. Yes, I do.

15 Q. And you see where the Census Bureau  
16 indicates that five-year ACS estimates have the  
17 largest sample size of different ACS estimates?

18 A. I do see that on this chart. Yes.

19 Q. You don't have any reason to doubt that,  
20 right?

21 A. No.

22 Q. Okay. And you see where on the chart it

1 states -- the Census Bureau states that five-year  
2 ACS estimates are data for all areas, correct?

3 A. Yeah, I do see that.

4 Q. As of the date of the Gary letter on  
5 December 12th, 2017, were you aware that the  
6 Census Bureau considers five-year ACS estimates to  
7 be usable data for all geographic areas regardless  
8 of population size?

9 A. Yes.

10 Q. All right. Let's talk about the Gary  
11 letter a little bit more. Back to page 2. The  
12 second-to-last paragraph, the last sentence reads,  
13 "The ACS, however, does not yield the ideal data  
14 for such purposes for several reasons."

15 In the sentence when the letter refers to  
16 "such purposes," that means for purposes of VRA  
17 enforcement, correct?

18 A. It refers to that and other purposes.

19 Q. Okay. What other purposes?

20 A. It also refers to use by state and local  
21 jurisdictions in drawing our redistricting plans.

22 Q. Redistricting plans for purposes of



1 compliance with the Voting Rights Act, correct?

2 A. Yes, with the Voting Rights Act, and with  
3 other federal and state law requirements.

4 Q. Why would you need ACS citizenship data  
5 to draw districts to comply with other federal and  
6 state legal requirements other than Section 2 of  
7 the Voting Rights Act?

8 A. Section 2 would be predominant. I don't  
9 know every state law requirement that might be  
10 implicated by that. There might be state law  
11 requirements that require a reference to  
12 citizenship data. Currently, to my knowledge,  
13 every state in the union uses total population to  
14 achieve compliance with the equal protection  
15 clause's one-person/one-vote mandate. But I  
16 believe that in the past there have been  
17 jurisdictions that have used other measures. And  
18 whether a jurisdiction might choose to use that  
19 measure, I don't know -- measure of citizenship as  
20 opposed to something else.

21 Q. You're not aware of jurisdictions using  
22 ACS data for purposes of complying with legal

1 requirements other than Section 2 of the Voting  
2 Rights Act, right, Mr. Gore?

3 A. That is correct.

4 Q. Okay.

5 A. Yeah.

6 Q. So when you say that -- sorry.

7 When the letter says that ACS data does  
8 not yield ideal data for such purposes, the  
9 predominant purpose that you're referring to there  
10 for which the ACS is not ideal is Section 2  
11 compliance, correct?

12 A. I think the predominant purpose to which  
13 the letter is referring is Section 2 compliance.  
14 That's correct.

15 Q. Okay. After the letter has that  
16 statement, there are four bullet points, correct?

17 A. That is correct.

18 Q. Okay. I want to ask you about each of  
19 these bullets.

20 Let's start with the first bullet which  
21 reads, "Jurisdictions conducting redistricting and  
22 the department, in enforcing Section 2, already

1 use the total population data from the census to  
2 determine compliance with the Constitution's  
3 one-person/one-vote requirement (see *Evenwel v.*  
4 *Abbott*, 136 S.Ct. 1120, April 4th, 2016). As a  
5 result, using the ACS citizenship estimates means  
6 relying on two different data sets, the scope and  
7 level of detail of which vary quite  
8 significantly."

9 Did I read that right?

10 A. Yes, you did.

11 Q. Okay. So tell me if I have this right.  
12 The point that's being expressed in this bullet is  
13 that citizenship data from the ACS is not ideal  
14 for purposes of Section 2 compliance and  
15 enforcement because ACS citizenship data is a  
16 different data set that's separate and apart from  
17 the total population data derived from the  
18 decennial census; is that right?

19 A. I believe the point speaks for itself,  
20 and I think the way you've described it is more or  
21 less correct.

22 Q. Okay. Any ways in which the way I just

1 described it strike you as incorrect?

2 A. Not as I sit here right now, no.

3 Q. Okay. The total population data from the  
4 decennial census used for redistricting purposes  
5 is part of what the Census Bureau calls the  
6 PL94-171 data file, right?

7 A. That's right.

8 Q. Okay. And currently, the citizenship  
9 data from the ACS is produced as part of a  
10 different data set, the CVAP table from ACS data  
11 produced by the Census Bureau, correct?

12 A. That's my understanding, yes.

13 Q. Now, how does the fact that the decennial  
14 enumeration data is in one data set, the PL data  
15 file, whereas the ACS citizenship data is in a  
16 different data set, the CVAP table -- how does the  
17 fact that they're in two different data sets  
18 render the ACS not ideal data for purposes of  
19 Section 2 enforcement?

20 A. Particularly for a map drawer, if -- a  
21 map drawer drawing a map in Maptitude or some  
22 other software needs to have both of these forms

1 of information in order to draw districts that  
2 comply with the 14th Amendment and with Section 2.  
3 And map drawers currently have to go to two  
4 different data sets and try to match up those data  
5 sets in geography and specificity to the block  
6 level in order to perform that function.

7 If all of the data were available in the  
8 PL94-171 data set, they wouldn't have to do that.  
9 And experts engaged in redistricting litigation,  
10 including analyzing alleged violations of  
11 Section 2 and proposed remedial plans for proven  
12 violations of Section 2, could use a single  
13 data set to draw maps and otherwise to analyze  
14 Section 2 claims.

15 Q. If the Census Bureau could produce  
16 citizenship data as part of the PL data file  
17 without including a citizenship question on the  
18 census, would that resolve the concern that's  
19 expressed in this bullet point?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Yeah, again, that's

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1 hypothetical. I don't know they can do that  
2 either as a matter of law or technical capacity.  
3 And I think -- so I don't know the answer to that  
4 question.

5 BY MR. HO:

6 Q. But if the Census Bureau came to you and  
7 said, Mr. Gore, you've requested -- or the  
8 department has requested a citizenship question on  
9 the census; one of the reasons why is because the  
10 citizenship data we're currently giving you is in  
11 a different data set, but we've got a solution for  
12 you; we're going to put it all in one data set,  
13 and we've got a way of doing that without  
14 including a citizenship question on the census,  
15 would that resolve the bullet -- the concerns  
16 expressed in this bullet?

17 MR. GARDNER: Objection. Calls for a  
18 hypothetical. Also, objection, form.

19 THE WITNESS: Again, I can't engage in a  
20 hypothetical on that.

21 BY MR. HO:

22 Q. Would you be interested in learning from

1 the Census Bureau if the Census Bureau came to you  
2 with that suggestion?

3 MR. GARDNER: Objection. Hypothetical.

4 THE WITNESS: Again, that's a  
5 hypothetical. I can't engage in a hypothetical.

6 BY MR. HO:

7 Q. You don't know whether or not you'd be  
8 interested in a proposal from the Census Bureau to  
9 give you CVAP data as part of the PL data file  
10 without including a citizenship question on the  
11 census?

12 MR. GARDNER: Same objection.

13 THE WITNESS: Again, you're asking me a  
14 hypothetical without fleshing out all the facts  
15 and circumstances, so I can't tell you how anyone,  
16 the department or anyone else, would respond to  
17 that.

18 BY MR. HO:

19 Q. Has anyone with technical knowledge of --  
20 strike that. Never mind.

21 Prior to the Department of Justice's  
22 reliance on the ACS, the citizenship data from the

1 Census Bureau that DOJ used, we established  
2 earlier, that came from the census long form,  
3 correct?

4 A. Correct.

5 Q. And the census long form citizenship data  
6 was not produced as part of the PL data file,  
7 correct?

8 A. I don't know the answer to that question.

9 Q. Okay. So you're not aware of any time  
10 where the Department of Justice, in enforcing the  
11 Voting Rights Act, had a single data set which had  
12 total population data and citizenship data in it,  
13 right, Mr. Gore?

14 A. I'm not aware one way or the other.

15 Q. Okay. So the bullet in this letter is  
16 not expressing a preference for a return to a  
17 prior point in time when DOJ had total population  
18 data and citizenship data in a single data set,  
19 correct?

20 A. Again, I don't know the answer to that  
21 question because I don't know what occurred at a  
22 prior point in time, as I've just testified.



1 Q. But you're not saying that -- this letter  
2 is not saying that there was a prior point in time  
3 in which the Department of Justice had both total  
4 population and citizenship data in a single data  
5 set, correct?

6 A. I think the letter speaks for itself, and  
7 this particular bullet doesn't say that.

8 Q. Okay. Are you aware of a case where the  
9 Department of Justice was unable to succeed on a  
10 VRA claim because citizenship data and total  
11 population data were in two different data sets?

12 MR. GARDNER: I'm going to object to the  
13 extent that that calls for the disclosure of  
14 information subject to law enforcement privilege.

15 You can answer that question to the  
16 extent you can do that without disclosing  
17 privileged information.

18 THE WITNESS: I'm not aware of any such  
19 publicly disclosed case.

20 BY MR. HO:

21 Q. Okay.

22 MR. HO: So I'm going to sometimes ask

1 questions about whether or not DOJ has been able  
2 to succeed on cases. I'm going to make clear that  
3 those questions with limited to cases that have  
4 been filed -- right?

5 MR. GARDNER: Okay.

6 THE WITNESS: Okay.

7 MR. HO: And litigated in court.

8 MR. GARDNER: That's fair enough.

9 THE WITNESS: Thank you.

10 BY MR. HO:

11 Q. So the cases that DOJ has filed, you're  
12 not aware of any of those cases being unsuccessful  
13 because citizenship data and total population data  
14 were in two different data sets, correct?

15 A. That's correct. Again, we're not talking  
16 about cases that weren't filed. And, obviously,  
17 any case that was filed was a case that the  
18 Department of Justice believed it could win.

19 Q. Okay. You're not aware of any case filed  
20 by any plaintiff anywhere under the Voting Rights  
21 Act where the claim failed because of the fact  
22 that total population data and citizenship data

1 were in two different data sets, correct?

2 A. Again, that's correct with respect to  
3 cases that were actually filed. And we're not  
4 talking about cases that weren't filed.

5 Q. You're not aware of a case -- and I'm not  
6 even going to talk about the Department of  
7 Justice -- where people have talked about filing a  
8 case publicly, but said, you know what, we're just  
9 not going to file this case because population  
10 data and citizenship data, they're in two  
11 different data sets, right?

12 MR. GARDNER: Objection to form.

13 THE WITNESS: I believe that's right, as  
14 I understand your question.

15 BY MR. HO:

16 Q. The second bullet here, which is on page  
17 3, top of page 3, reads, "Because the ACS  
18 estimates are rolling and aggregated into  
19 one-year, three-year, and five-year estimates,  
20 they do not align in time with the decennial  
21 census data. Citizenship data from the decennial  
22 census, by contrast, would align in time with the

1 total and voting age population data from the  
2 census that jurisdictions already use in  
3 redistricting."

4 Did I read that right?

5 A. Yes, you did.

6 Q. The point that's being expressed --  
7 correct me if I'm wrong -- in this bullet is that  
8 citizenship data from the ACS is not ideal for VRA  
9 enforcement purposes because ACS citizenship data  
10 purportedly does not align in time with the  
11 decennial census data, correct?

12 A. That's correct.

13 Q. What do you mean when you say that ACS  
14 citizenship data do not align in time with the  
15 decennial census?

16 A. What do I mean or what does the  
17 department mean?

18 Q. What does the department mean?

19 A. I believe what the department means is --  
20 it dovetails with the conversation we had just a  
21 moment ago about what the ACS data are.

22 So the ACS data are -- at least for the

1 five-year estimates, are rolling. So they  
2 represent some estimate over five consecutive  
3 years. And the one-year estimate is a snapshot of  
4 one single year.

5 Now, the citizenship data from the  
6 decennial census is a recording of data at that  
7 point in time, and the ACS data doesn't always  
8 align with that particular point in time. So you  
9 may be measuring citizenship data from, if you're  
10 using a five-year estimate, four or five years  
11 before the census or four or five years after the  
12 census. And jurisdictions use the total  
13 population data in the census, and courts use that  
14 as well, throughout the entire decade.

15 Q. So is it your understanding that when  
16 experts give testimony in VRA cases using  
17 five-year ACS estimates for CVAP, that they are  
18 unable to give testimony about CVAP rates that  
19 align in time with the decennial census?

20 A. My understanding is that they may or may  
21 not be testifying as to CVAP levels that align  
22 with the census. It might be possible that they

1 do that in some cases; in other cases, they might  
2 be looking to data that predates the census or  
3 post-dates the census, again, because it's a  
4 five-year window as opposed to the same snapshot  
5 in time as the decennial census.

6 Q. Are you aware of a filed case by the  
7 Department of Justice under the Voting Rights Act  
8 where the department was unable to succeed on a  
9 VRA claim because of the fact that ACS citizenship  
10 data does not align in time with the decennial  
11 census data?

12 A. I am not aware of any such filed case.

13 Q. Okay. Are you aware of any case filed by  
14 any plaintiff anywhere where the court found  
15 that -- against the plaintiffs because the ACS  
16 data does not align in time with the decennial  
17 census?

18 A. I am not aware of any such filed case.

19 Q. Are you aware of any plaintiff ever  
20 declining to file a case because ACS data -- and  
21 I'm not talking about the department, not filed  
22 cases, because I understand that that's

1 privileged.

2 But just based on your knowledge as  
3 someone who's knowledgeable about the Voting  
4 Rights Act, are you aware of any case where any  
5 plaintiff outside of DOJ did not bring a case  
6 under Section 2 of the Voting Rights Act because  
7 ACS data does not align in time with the decennial  
8 census?

9 A. I'm not aware of that, and certainly not  
10 aware of it from any public information.

11 Q. Okay. Third bullet, which is the second  
12 on this page, reads, "The ACS estimates are  
13 reported at a 90 percent confidence interval, and  
14 the margin of error increases as the sample size  
15 and, thus, the geographic area decreases. See  
16 U.S. Census Bureau glossary, confidence interval  
17 (American Community Survey), available at" -- and  
18 then there's a website. I'm not going to read the  
19 URL.

20 After the URL, it says, "By contrast,  
21 decennial census is a full count of the  
22 population."

1 Did I read that right --

2 A. Yes.

3 Q. -- other than the URL?

4 Okay. When the letter says, "margin of  
5 error," what do you understand that to mean?

6 A. Because the ACS estimates are estimates,  
7 and not a hard count, there's an associated margin  
8 in which -- that the Census Bureau assigns a  
9 value, usually a percentage, that the Census  
10 Bureau assigns to convey that, from a matter of  
11 statistics, it has confidence that the true result  
12 is somewhere within that range. And that's  
13 referred to as the margin of error.

14 Q. Okay. So something like, you know,  
15 91 percent -- this is just an example; I just want  
16 to see if we understand margin of error the same  
17 way -- 91 percent of the voting age people in this  
18 area are citizens plus or minus 2 percentage  
19 points?

20 A. I believe the plus or minus is my  
21 understanding of what the margin of error is.

22 Q. Means it could be -- if the point



1 estimate is 91 percent, it could be 89 -- and it's  
2 plus or minus 2 points, it could be 89, it could be  
3 93; somewhere in that range?

4 A. That's my understanding.

5 Q. And you'd agree with me that estimates  
6 with a smaller margin of error are more precise  
7 than an estimate with a bigger margin of error,  
8 right?

9 A. Yes.

10 Q. Now, the point that's being expressed in  
11 this bullet is that citizenship data from the ACS  
12 is not ideal for purposes of VRA enforcement  
13 because ACS citizenship data has a margin of error  
14 that increases as you get to smaller and smaller  
15 geographic units, correct?

16 A. That's correct.

17 Q. Okay. And the letter contrasts those ACS  
18 estimates with those margins of error with  
19 decennial census data, which are a full count of  
20 the population, right?

21 A. That's correct.

22 Q. You're aware that decennial census data

1 that's published at the block level also has a  
2 margin of error associated with it; it's just not  
3 published by the Census Bureau, right?

4 A. I'm aware of that. Yes.

5 Q. You were aware -- so -- I'm sorry.

6 As of the date of the Gary letter, were  
7 you already aware that the decennial enumeration  
8 data contained margins of error?

9 A. I was aware generally that there were  
10 margin of errors that the Census Bureau imputed to  
11 that data. I don't know what those margins were.

12 Q. But as of the date of the Gary letter,  
13 you knew that even what is referred to in the Gary  
14 letter as full count data has margins of error  
15 associated with it, too, correct?

16 A. Yes.

17 Q. Okay. The Gary letter doesn't mention  
18 that full count data from the decennial census has  
19 margins of error, does it?

20 A. It doesn't appear to, no.

21 Q. Okay. So just so I'm clear here, the  
22 Gary letter contrasts full count decennial census

1 quote, full count of the population, correct?

2 A. No, that's incorrect.

3 Q. The letter reads --

4 A. It's not a confidence interval or a  
5 margin of error. It's a confidence interval and a  
6 margin of error.

7 Q. Okay. So let's try this again.

8 A. Please.

9 Q. The ACS data is criticized in this bullet  
10 as having a margin of error, correct?

11 A. I don't believe it's criticized. I  
12 believe it's described as having a margin of  
13 error.

14 Q. Okay. So let's try that again. The ACS  
15 data are described in this bullet as having a  
16 margin of error, correct?

17 A. That's correct.

18 Q. And the letter reads, "By contrast,  
19 decennial census data is a full count of the  
20 population," correct?

21 A. That's correct.

22 Q. And the bullet does not mention that

1 decennial census data have margins of error  
2 associated with them, correct?

3 A. That's correct, as I've already  
4 testified.

5 Q. Okay. Now, when citizenship data was  
6 derived from the long form questionnaire, that was  
7 data that also had a margin of error associated  
8 with it, correct?

9 A. I would imagine that's correct.

10 Q. Okay. So you'd agree that, as far as you  
11 know, the Department of Justice, when it's relied  
12 on citizenship data, that citizenship data has  
13 always had a margin of error associated with it,  
14 correct?

15 A. That's my understanding.

16 Q. Okay. This letter doesn't mention the  
17 fact that citizenship data collected from the  
18 census long form were, like the ACS, also  
19 statistical estimates with a margin of error  
20 associated with them, correct?

21 A. I'm sorry, can you repeat the question?

22 Q. Sure.

1           This letter, the Gary letter, it doesn't  
2           mention the fact that citizenship data collected  
3           from the long form were statistical estimates with  
4           a margin of error associated with them, just like  
5           the ACS, correct?

6           A.   If I can just say, I think what you mean  
7           is citizenship data reported from the long form  
8           questionnaire, not collected by the long form  
9           questionnaire.

10           But my understanding is that, yes,  
11           citizenship data reported from the long form  
12           questionnaire were estimates.

13           Q.   And the letter doesn't mention the fact  
14           that citizenship data collected from the long form  
15           questionnaire and reported from the long form  
16           questionnaire were, like the ACS, also statistical  
17           estimates that had margins of error, correct?

18           A.   I think that's correct with respect to  
19           reported from the long form questionnaire. I  
20           don't know if that's correct with respect to  
21           collected by the long form questionnaire because I  
22           don't know if the Census Bureau engaged in

1 statistical estimates when it was actually  
2 collecting the responses to the long form  
3 questionnaire.

4 Q. Thank you.

5 The letter doesn't mention that the  
6 Department of Justice has always relied on  
7 statistical estimates of citizenship with margins  
8 of error for purposes of VRA enforcement, does it?

9 A. I believe that's correct. Again, the  
10 letter speaks for itself.

11 Q. Okay. You're not aware of a single filed  
12 case by the Department of Justice where the  
13 Department of Justice was unable to succeed on a  
14 VRA claim because of the fact that the CVAP data  
15 on which DOJ was relying was a statistical  
16 estimate with a margin of error that increases as  
17 the geographic area decreases, correct?

18 A. I am not aware of any such filed case.

19 Q. You're not aware of any case where a  
20 plaintiff was unable to succeed on a VRA claim  
21 because of the fact the five-year ACS citizenship  
22 data have a margin of error associated with them,

1 correct?

2 A. Five-year estimates? That's correct.

3 Q. Okay. You're not aware of any case where  
4 plaintiffs, other than DOJ, declined to bring a  
5 VRA case -- let me start that question again.

6 You're not aware of any case where  
7 plaintiffs declined to bring a VRA claim because  
8 ACS data are statistical estimates with a margin  
9 of error, correct?

10 A. That is correct. I am aware of one case  
11 in which a court held that the one-year ACS  
12 estimate, because of its associated margin of  
13 error, was insufficiently reliable to allow the  
14 plaintiff in that case to proceed with a Section 2  
15 claim.

16 Q. Right. That's the Benavidez case, right?

17 A. That is correct.

18 Q. We'll talk about that in a bit, but I  
19 want to talk about something else first.

20 (Gore Deposition Exhibit 19 marked for  
21 identification and attached to the  
22 transcript.)

1 BY MR. HO:

2 Q. I'm going to show you a document that's  
3 marked as Exhibit 19.

4 MR. HO: You guys have seen this on your  
5 side. It was used in the Abowd 30(b)(6)  
6 deposition.

7 BY MR. HO:

8 Q. I'm going to represent to you that this  
9 is a map derived from census data from the Census  
10 Bureau website. And it was joined with Tiger  
11 files to show census blocks in the Fort Myers,  
12 Florida, area with total population numbers for  
13 each census block.

14 So the lines represent the borders of  
15 census blocks. The numbers represent the total  
16 population in each census block. Okay?  
17 Everything I say make sense to you?

18 A. I accept your representation.

19 Q. Thank you. Okay.

20 So I just want to try to understand DOJ's  
21 position here about why you need CVAP data at the  
22 block level.



1 Is it correct that the Department of  
2 Justice, when you look at a map like this and you  
3 want to bring a Section 2 case, and you see these  
4 population numbers here, you want to know how many  
5 of the people in each of these blocks with hard  
6 count numbers are voting age citizens as opposed  
7 to simply having a statistical estimate of the  
8 voting age citizens in each block, correct?

9 MR. GARDNER: Objection to the extent  
10 that that calls for information that is subject to  
11 deliberative process privilege.

12 To the extent you can answer that  
13 question without divulging that information, you  
14 may do so.

15 THE WITNESS: The position of the  
16 Department of Justice is that we want to have the  
17 most complete, accurate, reliable data we can  
18 possibly have.

19 We have the ACS data. We have been  
20 bringing cases using the ACS data. We believe  
21 that having a hard count citizenship data from the  
22 census questionnaire would give us another

1 data point that we could use to identify  
2 jurisdictions for potential Section 2  
3 investigations and enforcement.

4 I don't believe it's disputed by anybody  
5 that a litigant, any plaintiff, the Department of  
6 Justice or a private plaintiff, needs block-level  
7 data in order to bring Section 2 redistricting  
8 claims -- now, whether that's derived from the ACS  
9 or from some other source -- because when  
10 jurisdictions draw districts to achieve equal  
11 population, they use block-level data.

12 So, for example, on this map you've  
13 handed me, a map drawer might draw various lines  
14 through this area. And understanding what  
15 population is moving between those areas and what  
16 the citizenship composition and the racial  
17 composition of those areas is is essential to  
18 identifying potential Section 2 violations.

19 BY MR. HO:

20 Q. Okay. So let's look at the middle of the  
21 map. Do you see where it says Lee?

22 A. Yes.

1 This is one point of data that we would want to  
2 use, and we're using other data as well to  
3 identify potential Section 2 investigations and  
4 enforcement actions.

5 BY MR. HO:

6 Q. So the way things work right now is, you  
7 take an ACS estimate of the percentage of voting  
8 age people in a census block who are citizens, and  
9 then you look at the census blocks within that --  
10 sorry. You look at the individual census blocks  
11 within that census block group, and then you  
12 estimate how many of the people in that census  
13 block are actually citizens of voting age based on  
14 the ACS estimate, right?

15 A. I think that's right to the extent I  
16 understood your question. I believe what you're  
17 saying is the ACS data is reported at the census  
18 block group level, and then estimates can be  
19 derived for individual census blocks based on that  
20 data at the group level.

21 Q. Right. So let's take this block of five  
22 people. Right? If the block group that this was

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1 in, the ACS reported 60 percent of the people in  
2 that block group are citizens, what you would do  
3 right now is you take that 60 percent number and  
4 then you apply it to the individual blocks. So  
5 you would look at this group of five and you'd  
6 say, well, our estimate is three of those five  
7 people are citizens, correct?

8 MR. GARDNER: Objection. Form.  
9 Objection. Hypothetical.

10 THE WITNESS: That would be one way to  
11 estimate census block citizenship data from an ACS  
12 estimate at the block group level.

13 BY MR. HO:

14 Q. And what the Department of Justice is  
15 saying is that we have these estimates, but we'd  
16 also like a hard count, because if we had the  
17 decennial census questionnaire out there and had  
18 the citizenship question posed, we would know with  
19 a hard count instead of an estimate -- instead of  
20 only an estimate -- how many of those five people  
21 are, in fact, citizens, correct?

22 MR. GARDNER: Objection. Form.

1 THE WITNESS: That's more or less  
2 correct. I believe we want to have the best, most  
3 accurate and most complete data we can possibly  
4 have.

5 BY MR. HO:

6 Q. Okay. Now, you know that the only data  
7 the Census Bureau makes available to DOJ is  
8 aggregate statistical data over a geographical  
9 area and not individual census responses, right?

10 A. That's correct.

11 Q. And your understanding is that individual  
12 responses to the census questionnaire by law have  
13 to stay with the Census Bureau and can't be shared  
14 with the Department of Justice or the public,  
15 correct?

16 A. That is my understanding. Correct.

17 Q. And the reason why the Census Bureau can  
18 only give you that aggregate statistical  
19 information covering a geographical area rather  
20 than an individual response is because title 13  
21 prohibits disclosure of individual responses to  
22 the census, correct?

1 THE WITNESS: I haven't studies title 13,  
2 so I don't know the exact parameters of it.

3 BY MR. HO:

4 Q. Well, you just told me before that  
5 individual census responses are prohibited from  
6 disclosure. You understand that, right?

7 A. I do.

8 Q. Okay.

9 A. What I don't know is what exceptions, if  
10 any, apply to that particular prohibition. As a  
11 general matter, I understand that that's a  
12 prohibition. I've not studied the issue, and so  
13 I'm not in a position to give a legal opinion on  
14 it one way or the other. But that's my -- what I  
15 testified to before was my general understanding  
16 of title 13.

17 Q. Okay. Your expectation is that when you  
18 requested a citizenship question on the census  
19 questionnaire, that the Census Bureau was going to  
20 include it, collect that information, and give it  
21 to the Department of Justice on a block-by-block  
22 level, correct?

1           A.    Yes.

2           Q.    Okay.  How can the Census Bureau give you  
3   block-by-block information based on responses to  
4   the census questionnaire for this block with one  
5   person on it without telling you how that person  
6   responded to the citizenship question on the  
7   census questionnaire?

8           MR. GARDNER:  Objection.  Calls for a  
9   legal conclusion.  Lack of foundation.

10          THE WITNESS:  Again, I haven't studied  
11   the question as a legal matter.  I would not  
12   anticipate, in any event, that the Census Bureau  
13   would provide an individual's actual questionnaire  
14   to the Department of Justice in connection with  
15   our request.

16   BY MR. HO:

17          Q.    That wasn't my question about whether or  
18   not they were going to give you a questionnaire.

19          You want individual block-level data  
20   derived from the census questionnaire --

21          A.    I actually think it was your question.  
22   Because, as I understand title 13, it's a

1 prohibition on providing the individual  
2 questionnaire.

3 Q. So your understanding is that when the  
4 Census Bureau includes a citizenship question on  
5 the 2020 census questionnaire, collects it,  
6 aggregates it block by block, that for this census  
7 block with one person on it, what they tell you is  
8 going to reflect that one person's answer to the  
9 citizenship question?

10 MR. GARDNER: Objection.  
11 Mischaracterizes the witness' prior testimony.

12 THE WITNESS: I don't believe that's what  
13 I testified to.

14 BY MR. HO:

15 Q. Okay. What's your understanding of what  
16 the Census Bureau is going to give you for this  
17 census block of one person in terms of CVAP data  
18 when the citizenship question is included on the  
19 census?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: I have no understanding of



1 what the Census Bureau is going to do or what data  
2 it's going to provide us in the future related to  
3 this request.

4 BY MR. HO:

5 Q. You don't know one way or the other, is  
6 what you're saying, whether or not, when the  
7 Census Bureau gives you block-by-block CVAP data  
8 derived from responses to the census  
9 questionnaire, whether or not, with respect to a  
10 block that has one person on it, that that  
11 individual block-level CVAP data is going to  
12 reflect that person's response to the citizenship  
13 question on the census, correct?

14 MR. GARDNER: Objection. Form.  
15 Objection. Hypothetical.

16 THE WITNESS: Again, that's hypothetical.  
17 What I'm telling you is I don't know how the  
18 Census Bureau planned to report the data that  
19 we've requested.

20 BY MR. HO:

21 Q. So you don't know one way or the other  
22 whether or not the data that you've requested

1 that's reported from the Census Bureau is going  
2 to, in fact, be derived from responses to the  
3 citizenship question on the census questionnaire,  
4 correct?

5 A. That's not what I said. What I said was  
6 I don't know the form that the reporting is going  
7 to take. I don't know what information the Census  
8 Bureau -- what form they're going to provide the  
9 information to us in.

10 Q. Well, that wasn't my question about the  
11 form. I'm just talking about a census block with  
12 one person on it.

13 You want block-by-block data from the  
14 Census Bureau. That's what you've requested,  
15 correct?

16 A. That is correct.

17 Q. Okay. So when you get block-by-block  
18 level -- block-by-block CVAP data from the Census  
19 Bureau derived from responses to the citizenship  
20 questionnaire, you don't know whether or not, when  
21 you get data back from the Census Bureau about a  
22 block that has one person on it, whether or not

1 data, like if it's in an Excel spreadsheet  
2 or something like that, and I'm not --

3 A. No, of course you are.

4 Q. -- asking about -- and I'm not asking  
5 about whether or not you plan on violating title  
6 13. I'm asking a much simpler question than that.

7 It's that when the Census Bureau gives  
8 you block-by-block citizenship data, as you've  
9 requested, based on responses to the citizenship  
10 questionnaire, right now, you don't know, if  
11 you're looking at a block with one person on it,  
12 whether or not that citizenship data that you get  
13 from the Census Bureau is going to reflect the  
14 response to the citizenship questionnaire,  
15 correct?

16 MR. GARDNER: Same objections.

17 THE WITNESS: Of course I don't know  
18 that, because I don't know what the data is going  
19 to be. And I don't know whether the person who  
20 completes the census questionnaire is going to  
21 complete it fully or something else. I have no  
22 idea.

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1 BY MR. HO:

2 Q. Okay.

3 A. You're asking about something that might  
4 happen in the future. That's a hypothetical. I  
5 don't know.

6 Q. Well, this is the data that the  
7 Department of Justice has requested. You've  
8 requested that the Census Bureau go block by  
9 block and ask --

10 A. That's correct.

11 Q. -- people block by block, every member of  
12 every household, how many people are citizens and  
13 not, correct?

14 A. That is correct.

15 Q. And you expect that the CVAP table that  
16 you get from the Census Bureau on a block-by-block  
17 basis is going to reflect answers to those  
18 citizenship questions, correct?

19 A. That would be my expectation. Yes.

20 Q. Okay. But my question for you is -- and  
21 if you don't know the answer, just say you don't  
22 know; that's okay --

1           A. I've said now five or six times that I  
2       don't know, because you're asking me a  
3       hypothetical question.

4           Q. I haven't asked the question yet.

5           A. You've asked it now six or eight times  
6       and --

7           Q. Well, Mr. Gore, it's not hypothetical.  
8       You understand that there are census blocks with  
9       one human on them, correct?

10          A. I do understand that. Yes.

11          Q. Okay. If the Census Bureau is going to  
12       give you CVAP data for that block and tell you  
13       whether or not that person is a citizen, you don't  
14       know, sitting here today, whether or not that --  
15       that data that the Census Bureau is going to give  
16       you is going to reflect that person's answer to  
17       the citizenship question on the census, correct?

18          A. I don't know what that data is going to  
19       reflect because, again, you're asking me about a  
20       hypothetical.

21               MR. GARDNER: I don't want to interrupt  
22       you line of questions, but it's about a quarter to

1 1:00. Do you want to break for lunch soon?

2 MR. HO: In a minute.

3 BY MR. HO:

4 Q. Is it your understanding that, when the  
5 Census Bureau reports citizenship data after the  
6 2020 census about a block that has one person on  
7 it, that that citizenship data reported by the  
8 Census Bureau will indicate whether or not that  
9 person responded to the citizenship question on  
10 the census by stating whether he or she is a  
11 citizen?

12 A. I'm sorry, can you try that again? I  
13 didn't follow that.

14 Q. Sure. Is it your understanding that,  
15 when the Census Bureau reports CVAP data block by  
16 block after the 2020 census, that, with respect to  
17 blocks that have only one person on it, that the  
18 CVAP data reported by the Census Bureau will  
19 reflect the answer that that person gave to the  
20 citizenship question on the census questionnaire?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: My understanding is that

1 that would certainly be possible, just like it  
2 would reflect information about that person's race  
3 that they would have provided on the census  
4 questionnaire.

5 BY MR. HO:

6 Q. Now, you're aware that the Census Bureau  
7 intends to use techniques such as synthetic data  
8 noise infusion to avoid the disclosure of people's  
9 responses to the census questionnaire?

10 MR. GARDNER: Objection. Lack of  
11 foundation.

12 THE WITNESS: I'm aware that there are  
13 some techniques. I don't know that particular  
14 technique. I'm not familiar with it.

15 BY MR. HO:

16 Q. So you've never heard the term "synthetic  
17 data noise infusion" before?

18 A. I believe I may have heard it. I just  
19 don't understand it.

20 Q. You're not aware that synthetic noise  
21 infusion is a practice whereby the Census Bureau  
22 intends to replace some sensitive information

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1 about a census respondent with different  
2 information based on sample data from a  
3 statistical model when it publishes the data?

4 A. I generally have that understanding. I  
5 cannot perform that particular data manipulation  
6 myself.

7 Q. You're aware that, because of disclosure  
8 avoidance procedures, that when CVAP data is  
9 reported by the Census Bureau after the  
10 2020 census, that even with a citizenship question  
11 on the 2020 census, that that CVAP data at the  
12 block level will have error margins associated  
13 with it, correct?

14 A. I believe -- I'm sorry, can you repeat  
15 the question?

16 Q. Sure. You're aware that, because of  
17 disclosure avoidance procedures like synthetic  
18 noise infusion, which we talked about a second  
19 ago, that even with the citizenship question on  
20 the 2020 census questionnaire, the CVAP data  
21 produced by the Census Bureau at the block level  
22 will have error margins associated with it,



1 correct?

2 A. I'm not aware of that because I don't  
3 understand the causal relationship between those  
4 masking techniques and any margin of error.  
5 Moreover, I don't know what techniques the Census  
6 Bureau plans to use or how it plans to deploy  
7 those with respect to responses to the  
8 2020 census.

9 Q. Okay. So before you requested -- I'm  
10 sorry. Let me start that again.

11 Before the Department of Justice  
12 requested a citizenship question be added to the  
13 2020 census questionnaire, you didn't attempt to  
14 ascertain whether or not the data derived from the  
15 question would produce error margins or not,  
16 correct?

17 A. I believe what I said was I was aware  
18 that there are margins of error that can be  
19 associated with the census data. I don't know how  
20 the Census Bureau plans to ask this question or  
21 what it plans to do with respect to data collected  
22 in response to that question.

1 Q. But you're aware, are you not, that the  
2 Census Bureau today does not know whether or not  
3 the margins of error associated with the CVAP data  
4 that it produces based on responses to the census  
5 questionnaire will have margins of error that are  
6 larger or smaller than the CVAP data currently  
7 used by the Department of Justice?

8 MR. GARDNER: Objection.

9 BY MR. HO:

10 Q. Right?

11 MR. GARDNER: Objection. Lack of  
12 foundation.

13 THE WITNESS: I am not aware of the  
14 Census Bureau's view on that issue.

15 BY MR. HO:

16 Q. Okay. So you didn't try to determine,  
17 before requesting a citizenship question on the  
18 census questionnaire, whether or not CVAP data  
19 derived from that citizenship question would, in  
20 fact, have smaller margins of error than the CVAP  
21 data currently relied on by the Department of  
22 Justice, correct?

1           A.   Are you asking about me, personally?   You  
2   used the word "you" in your question.   I just want  
3   to understand who you're asking --

4           Q.   The Department of Justice.

5           A.   Ah.   I'm not aware of what the Department  
6   of Justice may or may not have done.

7           Q.   When did you become aware of the fact  
8   that, due to disclosure avoidance techniques, CVAP  
9   data derived from responses to the citizenship  
10   questionnaire would have margins of error  
11   associated with it?

12          A.   Again, I have testified that I'm not  
13   aware of the causal relationship that you're  
14   talking about, so I'm not sure I ever have become  
15   aware of that because I don't know what those  
16   techniques are, I don't know how they relate to  
17   the citizenship question, and I don't know how the  
18   Census Bureau plans to deploy them and -- with  
19   respect to the 2020 census.

20          Q.   So you've -- and when I say "you," the  
21   Department of Justice -- hasn't reached out to the  
22   Census Bureau to try to understand the causal

1 relationship, as you put it, between disclosure  
2 avoidance and margins of error associated with  
3 CVAP data collected from the 2020 census  
4 questionnaire, correct?

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 THE WITNESS: I'm not aware of what  
8 everyone in the Department of Justice may or may  
9 not have done.

10 BY MR. HO:

11 Q. You're not aware of any such  
12 communications between the Department of Justice  
13 and the Census Bureau about whether or not, due to  
14 disclosure avoidance techniques, the CVAP data  
15 produced from responses to the decennial census  
16 questionnaire, would, in fact, have smaller  
17 margins of error than the CVAP data currently  
18 relied on by the Department of Justice, correct?

19 A. I don't believe I'm aware of any such  
20 communication.

21 Q. Okay. The Gary letter, when it describes  
22 decennial census data as a full count of a

1 population, it doesn't mention the fact that  
2 citizenship data based on responses to the  
3 decennial census questionnaire would also have  
4 margins of error associated with it, correct?

5 MR. GARDNER: Objection. Asked and  
6 answered.

7 THE WITNESS: And again, I think your  
8 question assumes that there are going to be these  
9 margins of error tied to these disclosure masking  
10 techniques, and I'm not sure whether that --  
11 whether or not that's correct. I don't know one  
12 way or the other.

13 BY MR. HO:

14 Q. The Gary letter doesn't mention the fact  
15 that CVAP data derived from the decennial census  
16 would have margins of error due to disclosure  
17 avoidance techniques that might even be larger  
18 than the margins of error currently associated  
19 with ACS CVAP data relied on by the Department of  
20 Justice at present, correct?

21 A. Again, I don't -- I'm not sure I'm  
22 following all the chains of that hypothetical, and

1 I don't know one way or the other.

2 Q. If the Census Bureau could produce full  
3 count CVAP data at the block level without margins  
4 of error and without including a citizenship  
5 question on the census, would that alleviate the  
6 concerns expressed in this bullet?

7 MR. GARDNER: Objection. Hypothetical.  
8 Also, objection, compound.

9 THE WITNESS: And we're so far removed  
10 from the Gary letter at this point, I don't know  
11 which bullet you're referring to.

12 BY MR. HO:

13 Q. I'm referring to the third bullet, the  
14 same one we've been talking about this entire  
15 time.

16 A. You just put another exhibit in front of  
17 me, so --

18 Q. It's on page 3, the second bullet on that  
19 page about the ACS estimates being reported at a  
20 90 percent confidence interval, and the letter  
21 which contrasts that to decennial census data,  
22 which is a full count of the population.

1 A. I understand that the Census Bureau --

2 Q. I haven't posed a question yet.

3 A. Oh, I'm sorry. I thought you posed a  
4 question and then pointed me back to it.

5 Q. So here's my question with respect to  
6 this bullet. If the Census Bureau could produce  
7 to you full count CVAP data that didn't have  
8 sampling margins of error like the ACS CVAP data  
9 but -- and could do so without including a  
10 citizenship question on the census, that would  
11 resolve the concerns expressed in this bullet,  
12 correct?

13 MR. GARDNER: Objection. Calls for  
14 hypothetical.

15 THE WITNESS: That's hypothetical. I  
16 can't answer that.

17 BY MR. HO:

18 Q. You don't know one way or the other?

19 MR. GARDNER: Objection. Calls for  
20 hypothetical.

21 THE WITNESS: It's a hypothetical. I  
22 can't answer a hypothetical.

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1 BY MR. HO:

2 Q. The fourth bullet here --

3 A. Before moving on to a new bullet, can we  
4 take a break for lunch?

5 MR. GARDNER: Yeah. It's 12:55. We've  
6 been going over an hour now.

7 MR. HO: Okay. Sure.

8 THE WITNESS: Thank you.

9 VIDEO TECHNICIAN: This concludes media  
10 unit number 3. The time on the video is  
11 12:55 p.m. We are off the record.

12 (A recess was taken.)

13 VIDEO TECHNICIAN: This begins media unit  
14 number 4. The time on the video is 2:05 p.m. We  
15 are on the record.

16 BY MR. HO:

17 Q. Mr. Gore, before the break do you  
18 remember talking about margins of error?

19 A. Yes.

20 Q. Do you remember how we talked about how,  
21 when data has smaller margins of error, we'd --  
22 you and I agree that that data would be more



1 precise than data that has larger margins of  
2 error, right?

3 A. Yes.

4 Q. Today, do you believe that CVAP data  
5 produced from responses to a question about  
6 citizenship on the census questionnaire will be  
7 more precise than the data that the Department of  
8 Justice is currently relying on with respect to  
9 CVAP for purposes of VRA enforcement purposes?

10 A. I'm not sure I have a view on that one  
11 way or the other, since I don't know what the  
12 margin of error is that the Census Bureau will  
13 assign to census responses and, particularly, the  
14 citizenship question should it be asked on the  
15 2020 census.

16 Q. So just to clarify, right now you don't  
17 know whether or not CVAP data produced from  
18 responses to the citizenship question on the  
19 census questionnaire will, in fact, be more  
20 precise than the CVAP data on which DOJ is  
21 currently relying for purposes of VRA enforcement?

22 A. I believe that's correct. I don't know

1 what the margin of error is that will be assigned  
2 to that, to that data.

3 Q. I want to turn back to the Gary letter.  
4 And the last bullet, which is the fourth bullet  
5 overall, it's the third bullet on page 3 of the  
6 letter, it reads, "Census data is reported to the  
7 census block level, while the smallest unit  
8 reported in the ACS estimates is the census block  
9 group. See American Community Survey data 3, 5,  
10 10. Accordingly, redistricting jurisdictions and  
11 the department are required to perform further  
12 estimates and to interject further uncertainty in  
13 order to approximate citizen voting age population  
14 at the level of a census block, which is the  
15 fundamental building block of a redistricting  
16 plan. Having all of the relevant population  
17 citizenship data available in one data set at the  
18 census block level would greatly assist the  
19 redistricting process."

20 Did I read that correctly?

21 A. Yes, you did.

22 Q. Okay. Correct me if I'm wrong, but the

1 point that's being expressed in this bullet is  
2 that citizenship data from the ACS is not ideal  
3 for purposes of VRA enforcement because ACS  
4 citizenship data is published at the block group  
5 level and DOJ is required to perform further  
6 estimates to generate CVAP data at the census  
7 block level, correct?

8 A. Correct.

9 Q. Historically, CVAP data broken down by  
10 race and ethnicity derived from the census long  
11 form was not published at the census block level,  
12 correct?

13 A. I don't know the answer to that.

14 Q. You're not aware of any time previously  
15 where DOJ has had at its disposal CVAP data broken  
16 down by race and ethnicity at the census block  
17 level, correct?

18 A. I am not aware of that.

19 Q. You're not aware of any time previously  
20 where DOJ did not have to use an estimated -- an  
21 estimation procedure in order to convert CVAP data  
22 from the Census Bureau from one geographical level

1 into block level data broken down by race or  
2 ethnicity, correct?

3 A. As I understand your question, that's  
4 correct.

5 Q. The Gary letter doesn't mention the fact  
6 that, for purposes of VRA enforcement, DOJ has  
7 always had to use an estimated -- an estimation  
8 procedure in order to convert CVAP data from the  
9 Census Bureau at one geographic level into CVAP  
10 data by race and ethnicity at the block level,  
11 correct?

12 A. I've just testified that I don't know  
13 whether that's a fact or not. But there's no  
14 mention of that issue in the Gary letter.

15 Q. You've never assessed the statistical  
16 reliability of estimation techniques for deriving  
17 block level CVAP data from block group level CVAP  
18 data, correct?

19 MR. GARDNER: Objection. Form.

20 THE WITNESS: I don't believe I have, no.

21 BY MR. HO:

22 Q. You're not aware of any case that was

1 filed by DOJ where DOJ was unable to succeed on a  
2 VRA claim because of the fact that DOJ performed  
3 an estimation procedure to derive census block  
4 level CVAP data correct?

5 A. I'm not aware of any such filed case.

6 Q. You're not aware of any case where any  
7 plaintiff was unable to succeed on a VRA claim  
8 because of the fact that the plaintiff had to  
9 perform an estimation procedure to derive  
10 block-level CVAP data, correct?

11 A. I'm not aware of any such filed case, and  
12 I understand your question to be limited to filed  
13 cases.

14 Q. You're not aware of any situation where a  
15 plaintiff did not bring a case because of the fact  
16 that the plaintiff would have to perform an  
17 estimation procedure in order to generate CVAP  
18 data at the census block level, correct?

19 MR. GARDNER: Objection to the extent  
20 that you're calling for information subject to the  
21 law enforcement privilege. To the extent you are  
22 asking for that information, I would instruct the

1 witness not to answer.

2 To the extent you can answer that  
3 question without divulging law  
4 enforcement-sensitive information, you may do so.

5 THE WITNESS: I am not aware of any  
6 public, nonprivileged information to indicate the  
7 existence of any such case.

8 BY MR. HO:

9 Q. If the Census Bureau could produce CVAP  
10 data at the block level for the Department of  
11 Justice instead of at a different level of  
12 geography, and could do so without including a  
13 citizenship question on the census, would that  
14 alleviate the concern that's expressed in this  
15 bullet point?

16 MR. GARDNER: Objection. Calls for a  
17 hypothetical.

18 THE WITNESS: It's a hypothetical I can't  
19 engage in.

20 MR. HO: You're not instructing -- Josh,  
21 you're not instructing him not to answer the  
22 question, right? You're just lodging an

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1 BY MR. HO:

2 Q. You're just refusing to answer the  
3 question, correct?

4 A. I'm telling you my answer is I won't  
5 engage in a hypothetical.

6 Q. Okay. Aside from the four bullets  
7 expressed in this letter, are there any other  
8 reasons why ACS CVAP data are not the ideal data  
9 for purposes of VRA enforcement of which you are  
10 aware?

11 A. Not that I'm aware of.

12 Q. Okay. I'm going to show you a document.  
13 We'll mark this as 20.

14 (Gore Deposition Exhibit 20 marked for  
15 identification and attached to the  
16 transcript.)

17 BY MR. HO:

18 Q. This is a printout from the Department of  
19 Justice website listing cases brought by the  
20 voting section. The URL for this is on the bottom  
21 left-hand corner of the first page. The first  
22 page, the cases -- under the first header, Cases

1 foundation.

2 THE WITNESS: I'm not aware of any such  
3 case. I will note that some of these cases are  
4 not redistricting cases, and so would not have  
5 implicated that issue.

6 BY MR. HO:

7 Q. Okay. The issue of CVAP, your testimony  
8 is it's only relevant in Section 2 redistricting  
9 cases, but not other kinds of Section 2 cases?

10 A. There may be other kinds of Section 2  
11 cases where it's also relevant, but I believe that  
12 at least a couple of these cases were cases where  
13 it would not have been relevant.

14 Q. You're not aware of any of these cases  
15 failing because of the quality of CVAP data  
16 available to the Department of Justice, correct?

17 MR. GARDNER: Objection. Lack of  
18 foundation.

19 THE WITNESS: I am not aware.

20 BY MR. HO:

21 Q. You mentioned earlier a case, the  
22 Benavidez case. Do you remember that?

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1 A. Yes.

2 Q. It's a case from the Northern District of  
3 Texas, right?

4 A. Yes.

5 Q. It's not a circuit court case, right?

6 A. That is correct.

7 Q. Okay. That's the only case in which you  
8 are aware that the plaintiff's claim failed in  
9 part due to reliance on ACS data, correct?

10 A. No, I don't think that's correct. I  
11 think it's the only case of which I'm aware where  
12 the plaintiff's case failed in part because of  
13 reliance on ACS CVAP data. I believe there's  
14 another case out there where plaintiff may have  
15 tried to use ACS total population data, and that  
16 was not upheld by the court.

17 Q. Okay. That case that you're referring  
18 to, that doesn't really have any bearing on the  
19 issue of the quality of citizenship data from the  
20 ACS, right?

21 A. That's correct. I'm just trying to be  
22 responsive to your question.

1 Q. No, I appreciate that.

2 So just so that the record is clear, the  
3 Benavidez case is the only case that you're aware  
4 of where the plaintiff's claim failed in part due  
5 to reliance on ACS CVAP data, correct?

6 A. Correct.

7 Q. And just to be clear, the Benavidez case  
8 was not brought by the Department of Justice,  
9 correct?

10 A. Correct.

11 Q. Now, your understanding is that the  
12 plaintiffs in the Benavidez case relied on  
13 one-year ACS estimates, correct?

14 A. That's my recollection from the case.  
15 Yes.

16 Q. And your recollection is that the  
17 plaintiffs in the Benavidez litigation did not  
18 rely on five-year ACS estimates, correct?

19 A. That is my recollection. Correct.

20 Q. And your recollection is that, in the  
21 Benavidez case, the court found that the one-year  
22 ACS data that the plaintiffs were relying upon was

1 not sufficiently reliable for the geographic areas  
2 at issue in that case, correct?

3 A. Correct.

4 Q. Okay. We established earlier that your  
5 understanding is that the Census Bureau publishes  
6 the five-year ACS estimates as reliable for any  
7 geographic area regardless of population size,  
8 correct?

9 A. I believe you showed me a page on the  
10 website that says that. I don't know what the  
11 Census Bureau means by that or what purposes it  
12 intends the ACS data to be used for. But that is  
13 the statement that you showed me earlier.

14 Q. And the plaintiffs in the Benavidez case  
15 didn't rely on those five-year ACS estimates,  
16 correct?

17 A. That's correct.

18 Q. And you --

19 A. That's my recollection.

20 Q. And you're not aware of a single case in  
21 which a plaintiff's VRA claim failed due to  
22 reliance on five-year ACS estimates, correct?

1 A. Correct. I'm not aware of any such case.

2 Q. You described the Benavidez case in your  
3 testimony to Congress, correct?

4 A. I believe I mentioned it. Yes.

5 Q. At the time you testified in Congress,  
6 you were aware that the plaintiffs in the  
7 Benavidez case relied on one-year rather than  
8 five-year ACS data, correct?

9 A. I believe that's correct.

10 Q. Okay. In your testimony in Congress, you  
11 didn't mention the fact that although the Census  
12 Bureau considers one-year ACS estimates to be  
13 reliable only for areas that are -- have 65,000  
14 people or more, it considers five-year ACS  
15 estimates to be reliable for any geographic area,  
16 correct?

17 A. I don't recollect the specifics of my  
18 testimony on that point.

19 Q. You don't recall making clear to Congress  
20 that there are five-year ACS estimates, as  
21 distinct from the one-year ACS estimates relied on  
22 by the plaintiffs in Benavidez, that are

1 considered by the Census Bureau to be reliable for  
2 any geographic area, correct?

3 A. I do not recall every word that I said in  
4 my testimony to Congress.

5 Q. That wasn't my question. My question  
6 was, you don't recall mentioning the five-year ACS  
7 estimates during your testimony in Congress,  
8 correct?

9 A. I don't recall mentioning it or not  
10 mentioning it.

11 Q. In fact, you didn't mention the five-year  
12 ACS estimates during your testimony, correct?

13 A. I answered that question. I don't recall  
14 whether I did or I didn't.

15 Q. And you didn't mention that the Census  
16 Bureau publishes ACS estimates that it considers  
17 reliable for any geographic area during your  
18 testimony in Congress, correct?

19 A. I don't recall whether I did or I didn't.  
20 And as I said before, I don't know what the Census  
21 Bureau means by that or the uses to which it  
22 intends the ACS can be put.

1 Q. Can you think of any reason why you  
2 wouldn't mention the fact that the -- that there  
3 are five-year ACS estimates during your  
4 congressional testimony?

5 A. I was not asked -- I don't believe I was  
6 asked the intervals of estimates that are  
7 available through the ACS. I was responding to a  
8 different question, as I recall my testimony. But  
9 if you point me to where my testimony is in the  
10 transcript, I'd be happy to discuss it further.

11 Q. Can you think of any reason why you  
12 wouldn't mention the fact that the Census Bureau  
13 produces estimates that have greater reliability  
14 at smaller geographic areas than the one-year ACS  
15 estimates that you did discuss during your  
16 congressional testimony?

17 A. Again, I'm happy to comment on my  
18 testimony if you want to point me to a specific  
19 page of it, and I can try to reconstruct why I did  
20 or did not give a particular piece of information.  
21 It may not have been responsive or relevant to the  
22 question.

1           Q.   You don't think Congress would have  
2           wanted to know that there are ACS estimates that  
3           are more reliable than the one-year ACS estimates  
4           that the plaintiffs relied on in the Benavidez  
5           case?

6                   MR. GARDNER:   Objection.   Calls for  
7           speculation.

8                   THE WITNESS:   These days, I have no idea  
9           what Congress wants.

10          BY MR. HO:

11                Q.   Going back to the list of cases that's in  
12           front of you --

13                A.   Exhibit 20?

14                Q.   Yes.

15                A.   Okay.

16                Q.   None of these cases have been filed since  
17           you were acting assistant attorney general for  
18           civil rights, correct?

19                   I meant just the Section 2 cases on the  
20           first page, sorry.

21                A.   That is correct.

22                Q.   In fact, none of the Section 2 cases

1 listed on the first page have been filed since the  
2 start of the Trump administration, correct?

3 A. That is correct.

4 Q. Okay. The previous administration -- for  
5 part of its time, the previous administration, in  
6 addition to having responsibilities under  
7 Section 2 of the Voting Rights Act, also had  
8 obligations under Section 5 of the Voting Rights  
9 Act, correct?

10 A. That's correct.

11 Q. The current administration does not have  
12 obligations under Section 5 of the Voting Rights  
13 Act to the same extent, correct?

14 MR. GARDNER: Objection to form.

15 THE WITNESS: That's correct.

16 BY MR. HO:

17 Q. What obligations, if any, does the  
18 current administration have with respect to  
19 Section 5 enforcement?

20 A. That is a fair question. There are a  
21 couple of jurisdictions that are covered under  
22 Section 3(c) of the Voting Rights Act, which is



1 similar to Section 5. We may, in fact, have no  
2 obligations with respect to Section 5 at this  
3 point due to the Supreme Court's decision in  
4 Shelby County, which was a 2013 decision, so it  
5 was about in the middle of the prior  
6 administration's tenure.

7 Q. Okay. If you look at the previous  
8 administration, 2009 through the beginning of  
9 2017, it looks like the Department of Justice  
10 filed five Section 2 cases during that period.

11 A. I believe that's correct.

12 Q. Okay. So previous administration had  
13 Section 5 obligations to review voting changes in  
14 all or part of 16 states for part of that time,  
15 correct?

16 A. I believe until the Shelby County  
17 decision in 2013.

18 Q. Okay. And the current administration  
19 doesn't have those obligations and hasn't filed  
20 any Section 2 cases?

21 A. That's correct. We also haven't had a  
22 decennial census which has required every state in

1 the union to redistrict during the time of this  
2 administration, which the prior administration did  
3 in the 2010 census.

4 Q. You would say that it is not unusual for  
5 the Department of Justice to go several years  
6 without filing a Section 2 case, right?

7 A. While I review this list, I think  
8 that's -- that may or may not be correct. But  
9 there have certainly been years and multiyear  
10 periods where the Department of Justice has not  
11 filed Section 2 cases.

12 Q. You're not saying that reliance on ACS  
13 CVAP data is the reason why the Department of  
14 Justice has failed to file a Section 2 case since  
15 the start of the Trump administration, right?

16 A. Again, I didn't think we were going to  
17 talk about cases that hadn't been filed. And I  
18 believe that's covered by law enforcement  
19 privilege and I can't talk about why or why not --  
20 why certain cases were or were not filed.

21 Q. Well, your counsel didn't object to my  
22 question.

1 Otherwise, I instruct you not to answer.

2 THE WITNESS: Consistent with that  
3 instruction, I can't answer.

4 BY MR. HO:

5 Q. Okay. You're not saying that if you had  
6 different CVAP data at your disposal, you would  
7 have filed some additional Section 2 cases, right?

8 MR. GARDNER: Same objection. Same  
9 instruction.

10 THE WITNESS: Consistent with that  
11 instruction, I can't answer.

12 MR. HO: We'll mark this as Exhibit 21.  
13 (Gore Deposition Exhibit 21 marked for  
14 identification and attached to the  
15 transcript.)

16 BY MR. HO:

17 Q. It's an e-mail exchange between you,  
18 Arthur Gary, and others. The top e-mail on the  
19 thread is from you to Arthur Gary dated  
20 January 29th, 2018. The first page bears Bates  
21 number DOJ 00002712.

22 I want to go through the individual

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1 e-mails on here. Okay?

2 So the top e-mail, this is Arthur Gary  
3 e-mailing you, correct?

4 A. I don't believe so, actually.

5 Q. Oh, I'm sorry. The top is you e-mailing  
6 Arthur Gary, correct?

7 A. Appears to be, yes.

8 Q. Okay. And the second e-mail, the second  
9 to most recent one on the first page here, Arthur  
10 Gary is forwarding to you an e-mail chain between  
11 him and Ron Jarmin, the acting director of the  
12 Census Bureau, correct?

13 A. That appears to be correct.

14 Q. Okay. I want to look at the first e-mail  
15 in time on this chain. It's on the last page,  
16 page 5, Bates number DOJ 2716.

17 This is an e-mail from Ron Jarmin to  
18 Arthur Gary, cc'ing Enrique Lamas of the Census  
19 Bureau. And it has the date December 22nd, 2017,  
20 right?

21 A. Yes, that's correct.

22 Q. Okay. The e-mail from Acting Director

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1 expressing the view that the best way to provide  
2 block-level CVAP data for purposes of VRA  
3 enforcement is not to add a citizenship question  
4 to the census?

5 A. No, that's not what I understand.

6 Q. What do you understand the Census Bureau  
7 director to be saying?

8 A. I believe he is saying that he's had  
9 staff review the question, and the staff had  
10 briefed him, and their findings suggest that the  
11 best way to provide that data would be through the  
12 linked file of administrative and survey data.

13 Q. Okay.

14 A. And then requesting to set up a meeting  
15 about that issue.

16 Q. Okay. So just to clarify, your  
17 understanding is that, in this e-mail, the acting  
18 director of the Census Bureau is expressing -- is  
19 stating that Census Bureau staff have briefed him  
20 and sug -- and -- on their findings which suggest  
21 that the best way to provide block-level CVAP data  
22 is not to add a citizenship question to the

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1 decennial census questionnaire, correct?

2 A. I think that's right. This e-mail speaks  
3 for itself, and obviously I didn't write it and it  
4 wasn't addressed to me.

5 Q. Your understanding is that the Census  
6 Bureau director is -- or acting Census Bureau  
7 director is stating that Census Bureau staff have  
8 conducted an analysis and briefed him on their  
9 findings which suggest that the best way to  
10 provide block-level CVAP data for DOJ's needs is  
11 through a linked file of administrative and survey  
12 data that the Census Bureau already possesses,  
13 correct?

14 A. That's my understanding of what this  
15 says. Yeah.

16 Q. And your understanding is that the Census  
17 Bureau director is -- acting Census Bureau  
18 director is writing and stating that his staff --  
19 that Census Bureau staff have analyzed this issue  
20 and briefed him on their findings that the linked  
21 file of administrative and survey data would  
22 result in higher quality data produced at lower

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1 cost than including a citizenship question on the  
2 census questionnaire, correct?

3 A. I understand that he is communicating  
4 that the findings of the staff suggest that. Yes.

5 Q. Okay. No meeting between the technical  
6 experts at DOJ and the Census Bureau took place  
7 between the date of the December 12th Gary letter  
8 requesting a citizenship question and the Ross  
9 decision memo in March of 2018 directing the  
10 inclusion of a citizenship question, correct?

11 A. I am not aware of any such meeting.

12 Q. You're not aware of any such meeting of  
13 technical staff in the civil rights division,  
14 which you are the head of, and the Census Bureau's  
15 technical staff to discuss this proposal -- or  
16 these findings, rather, about a different way of  
17 generating block-level CVAP data referenced in  
18 this e-mail, correct?

19 A. I am not aware of any such meeting.

20 Q. The next e-mail on this chain is on  
21 December 22nd, 2017. It's on page 4. Arthur Gary  
22 writes to Dr. Jarmin, "Dr. Jarmin, thank you for

1 your response. We look forward to meeting with  
2 you and your team in early January. Best  
3 regards."

4 Did I read that right?

5 A. Looks right, yeah.

6 Q. Okay. On page 3, page DOJ 2714, on  
7 January 2nd, Arthur Gary writes to Ron Jarmin, "It  
8 should work fine. Let me get back to you. Best  
9 wishes to you for 2018 as well."

10 I read that correctly, right?

11 A. Yes, you did.

12 Q. That's in response to a meeting -- an  
13 e-mail on the following page which is from Ron  
14 Jarmin to Arthur Gary which reads, "Arthur, happy  
15 new year. Would the late next week work for a  
16 meeting?" Right?

17 A. Appears -- that appears correct.

18 Q. Okay. So at this point, it looked like  
19 Mr. Gary was planning on having a meeting or  
20 suggested that a meeting the following week with  
21 the Census Bureau would work fine, correct?

22 A. Again, these e-mails speak for

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1 themselves. And I can't speak for Mr. Gary. But  
2 that seems about right.

3 Q. Okay. One week later -- I'm on page 3 --  
4 Ron Jarmin writes to Arthur Gary on January 9th,  
5 2018, "Gary, any updates? We have a pretty short  
6 clock to resolve the request. Would be good to  
7 meet with your team as soon as possible. Thanks."

8 Do you see that?

9 A. I do.

10 Q. Okay. In the next e-mail, also on  
11 January 9th, 2018, Arthur Gary writes back to Ron  
12 Jarmin and suggests a number of times, including  
13 Friday, January 19th, at 11:00 a.m., correct?

14 A. I'm sorry, which page are you on?

15 Q. Page 2.

16 A. I don't see any e-mail from January 13th.

17 Q. January 9th, 2018.

18 A. Okay. Which e-mail are we talking about?

19 I'm sorry.

20 Q. From Arthur Gary to Ron Jarmin --

21 A. At the bottom of the page?

22 Q. At the bottom of the page.

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1 A. Okay.

2 Q. Mr. Gary writes back to Ron Jarmin and  
3 offers a number of options for a meeting,  
4 including Friday, January 19th, at 11:00 a.m.,  
5 right?

6 A. That appears to be correct.

7 Q. And in the next e-mail on the thread,  
8 Dr. Jarmin writes to Arthur Gary on January 10th,  
9 "Thanks, Gary. Let's do Friday at 11:00. We're  
10 fine meeting at main Justice." Right?

11 A. Right.

12 Q. The next e-mail, which is on the first  
13 page at the bottom, on January 16th, 2018, Arthur  
14 Gary writes to cancel the meeting with Ron Jarmin,  
15 correct?

16 A. Well, it looks like -- he says  
17 they're unable -- "We" -- I don't know who "we"  
18 are -- "will be able to meet on Friday or this  
19 week."

20 Q. Did you have any conversations with  
21 Mr. Gary about meeting with the Census Bureau  
22 between the date of Dr. Jarmin's e-mail on

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1 December 22nd requesting a meeting between Census  
2 Bureau and DOJ staff and Arthur Gary's e-mail on  
3 January 16th stating, due to some scheduling  
4 conflicts, we will be unable to meet on Friday?

5 A. Yes.

6 Q. When did those conversations take place?

7 A. I don't remember the specific dates.

8 Q. What was the content of that  
9 conversation?

10 A. I believe the content of that  
11 conversation related to this request that the  
12 Census Bureau and the Department of Justice hold a  
13 meeting.

14 Q. And what did Mr. Gary convey to you about  
15 the Census Bureau's request to have a meeting  
16 between DOJ and Census Bureau technical staff?

17 A. He conveyed to me that the request had  
18 been made.

19 Q. What did he -- did he convey to you  
20 anything other than the fact that a request had  
21 been made?

22 A. I believe he mentioned that they had

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1 offered certain dates for that meeting, but  
2 that -- I don't recall the specifics of that  
3 conversation beyond that.

4 Q. Did Mr. Gary tell you that, in  
5 Dr. Jarmin's e-mail, he had written that Census  
6 Bureau staff had briefed him on their analysis  
7 which suggested that there was a way to produce  
8 higher quality CVAP data at lower cost for the  
9 Department of Justice through a means other than  
10 including a question about citizenship on the  
11 2020 census questionnaire?

12 A. I don't believe he conveyed that. I  
13 believe what he conveyed was that the Census  
14 Bureau thought there might be another way to get  
15 the data to the Department of Justice.

16 Q. And what was your response to receiving  
17 that information?

18 A. I listened to what Mr. Gary had to say  
19 and told him that I would think about the issue  
20 and discuss it further with others.

21 Q. Did you instruct Mr. Gary not to hold the  
22 meeting with the Census Bureau that was scheduled

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1 for Friday, January 19th?

2 A. I don't believe so, no.

3 Q. Do you know why that meeting did not  
4 occur?

5 A. I believe that -- I believe at the time  
6 we were trying to gather more information within  
7 the department about this meeting and whether it  
8 was consistent with our -- with what we wanted to  
9 do. And I believe that -- if I recall correctly,  
10 this was a request for more time from the Census  
11 Bureau that Mr. Gary submitted.

12 Q. What, if anything, did you do with the  
13 information that the Census Bureau had an  
14 alternative means for providing DOJ with  
15 block-level CVAP data?

16 A. I discussed that with various people at  
17 the Department of Justice.

18 Q. And who did you discuss that with?

19 A. I discussed it with Rachael Tucker, Pat  
20 Hovakimian. I may have discussed it with Danielle  
21 Cutrona. I'm not sure. And I eventually  
22 discussed it with the attorney general.

1 Q. You didn't discuss the fact that the  
2 Census Bureau had an alternative idea for  
3 producing block-level CVAP data for purposes of  
4 VRA enforcement with voting section employees?

5 A. I may have discussed it -- I think I  
6 probably did discuss it with Chris Herren as well.  
7 I may have discussed it with him. I don't recall  
8 specifically.

9 Q. You mentioned that you discussed it with  
10 the attorney general. When did you discuss the  
11 fact that the Census Bureau had an alternative  
12 means of producing block-level CVAP data with the  
13 attorney general?

14 A. It would have been at some point after I  
15 spoke to Art Gary. I don't remember the exact  
16 date.

17 Q. Roughly when did you speak to Art Gary?

18 A. Again, I don't remember the exact date of  
19 that either. It would have been before this  
20 January 16th e-mail.

21 Q. So sometime after this conversation -- so  
22 let me just back up here.

1 Q. And at some point after that, you had a  
2 conversation about this proposal with the attorney  
3 general, correct?

4 A. I don't know if it was so much about the  
5 proposal, because I wasn't up on what the  
6 specifics of the proposal were. I think we had  
7 a -- we may have had a conversation related to  
8 this issue of Census Bureau wanting to meet.

9 Q. You didn't ask Arthur Gary for the  
10 specifics of the proposal from the Census Bureau?

11 A. No, I don't believe I did.

12 Q. You didn't ask Arthur Gary to get more  
13 information about the specifics of the proposal  
14 from the Census Bureau to get higher quality CVAP  
15 data at lower cost?

16 A. I don't recall asking him that and I  
17 don't recall him conveying that to me that that  
18 was a representation that the Census Bureau had  
19 made.

20 Q. Okay. You at some point had a  
21 conversation with the Attorney General about this.  
22 Was that in person or by phone?

1 A. In person.

2 Q. And it was in January of 2018?

3 A. Probably. Yeah.

4 Q. What was discussed with respect to the  
5 Census Bureau's alternative proposal for producing  
6 block-level CVAP data?

7 MR. GARDNER: Objection. Calls for  
8 information that's subject to deliberative process  
9 privilege. I instruct the witness not to answer.

10 MR. HO: Can I just ask you what decision  
11 this deliberation went to, given that the  
12 department had already at this point --

13 MR. GARDNER: Sure.

14 MR. HO: -- made the request?

15 MR. GARDNER: It's embedded in your  
16 actual question about the consideration of  
17 alternatives.

18 Remember, the deliberative process  
19 privilege can apply even if no final decision is  
20 made.

21 MR. HO: So this is not about the  
22 decision to request the citizenship question.



1       that --

2               MR. GARDNER: Decision as to whether to  
3       pursue that proposal.

4               MR. HO: Okay. That's what I just wanted  
5       to clarify because --

6               MR. GARDNER: Yeah. Okay.

7               MR. HO: -- it wasn't clear to me.

8               MR. GARDNER: Sorry. I thought that was  
9       clear. I apologize. Yeah, that's the decision.

10       BY MR. HO:

11               Q. Okay. So the conversation with the  
12       attorney general included a discussion about  
13       whether or not to pursue the Census Bureau's  
14       proposal to produce block-level CVAP data for DOJ  
15       for VRA enforcement purposes without including a  
16       citizenship question, correct?

17               A. That is correct. And just to clarify, I  
18       wasn't familiar with all the particulars of their  
19       proposal.

20               Q. That's fine.

21               The decision was made not to pursue the  
22       Census Bureau's alternative proposal for producing

1 block-level CVAP data for purposes of VRA  
2 enforcement through a means other than including a  
3 citizenship question on the census, correct?

4 A. That is correct.

5 Q. Who made that decision?

6 A. The attorney general.

7 Q. When was that decision made?

8 A. Around this time. I don't know exactly  
9 when it was made. I can't remember the specific  
10 date.

11 Q. When you say "around this time," you mean  
12 around January of 2018, correct?

13 A. That is correct.

14 Q. Are the reasons for that decision  
15 memorialized anywhere?

16 A. Not to my knowledge.

17 Q. Were those reasons ever communicated to  
18 you?

19 A. Yes.

20 Q. What were those reasons?

21 MR. GARDNER: Objection. Calls for  
22 information subject to deliberative process

1 privilege. I instruct the witness not to answer.

2 THE WITNESS: Consistent with that  
3 instruction, I can't answer. But I do admire your  
4 tenacity.

5 BY MR. HO:

6 Q. On the first page, the second e-mail  
7 listed here is from Ron Jarmin to Art Gary on  
8 January 26th, 2018 and reads, "Art, any chance of  
9 meeting late next week? Thanks. Ron."

10 As of this date, it had not yet been  
11 communicated to the Census Bureau that the --  
12 whether or not the Department of Justice would  
13 meet to discuss the Census Bureau's other proposal  
14 for producing block-level CVAP data, correct?

15 A. I'm not sure I know the answer to that  
16 question.

17 Q. Who informed Art Gary of the decision not  
18 to meet with the Census Bureau to discuss their  
19 alternative proposal for producing block-level  
20 CVAP data?

21 A. I did.

22 Q. When did you inform Mr. Gary of that

1 decision?

2 A. It would have been around this  
3 January 29th date, I believe. But I don't recall  
4 specifically.

5 Q. And who informed you that the Department  
6 of Justice should not meet with the Census Bureau  
7 to discuss the Census Bureau's alternative  
8 proposal for producing block-level CVAP data?

9 A. The attorney general.

10 Q. You received this e-mail thread from  
11 Arthur Gary, which includes the initial e-mail  
12 from Dr. Jarmin describing the alternative  
13 proposal for collecting CVAP data at higher  
14 quality produced at lower cost on January 29th,  
15 2018, correct?

16 A. On this e-mail chain, that's correct. I  
17 don't know whether I received it before then or  
18 not. But yes, this e-mail -- the e-mail dated  
19 January 29th, 2018, at 2:33 p.m., is the first  
20 e-mail in this chain where Mr. Gary sent me that  
21 information.

22 Q. When you told Congress on May 21st, 2018,

1 Q. Your understanding is that Secretary Ross  
2 speaks for the Census Bureau?

3 A. Yes. On this -- at least on this issue.  
4 I understand that -- and again, I've not studied  
5 the legal questions in this case, but it's my  
6 understanding that the Secretary of Commerce has  
7 the authority to determine which questions will  
8 and will not be asked on the census questionnaire.

9 Q. Do you have any reason to think that  
10 Secretary Ross knows more about the accuracy of  
11 various forms of CVAP data than the career  
12 professionals at the Census Bureau?

13 MR. GARDNER: Objection. Lack of  
14 foundation.

15 THE WITNESS: I have no basis to answer  
16 that question.

17 BY MR. HO:

18 Q. You don't know one way or the other  
19 whether or not Secretary Ross knows more about the  
20 accuracy of various forms of CVAP data than the  
21 career professionals who work with statistical  
22 research and survey data at the Census Bureau?

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1 MR. GARDNER: Same objection.

2 THE WITNESS: I don't know one way or the  
3 other, and I don't know what Census Bureau staff  
4 ultimately concluded since the e-mail said there  
5 were suggestions made by particular findings.

6 It's my understanding that Secretary Ross  
7 has the legal right and the legal authority to  
8 make that determination on behalf of the Commerce  
9 Department and the Census Bureau under the  
10 relevant statutes that Congress has enacted.

11 BY MR. HO:

12 Q. So let's leave aside legal right and  
13 legal authority and let's just talk about the  
14 Census Bureau and what Dr. Jarmin represented in  
15 this e-mail.

16 Just here today, you know that Dr. Jarmin  
17 wrote to Arthur Gary and said Census Bureau staff  
18 have looked at this issue, and their analysis  
19 suggests that there's a way to get CVAP data for  
20 DOJ that would produce higher quality data at  
21 lower cost, and wanted to meet with DOJ about  
22 that. You understand that, right?

1           A.   Yes, I believe I've testified that I  
2   understand that.

3           Q.   Okay.   And when you told Congress that  
4   the best vehicle -- or the most appropriate  
5   vehicle for obtaining CVAP data was through the  
6   decennial census questionnaire, you didn't mention  
7   Dr. Jarmin's proposal, right?

8           MR. GARDNER:   Objection.   Asked and  
9   answered.

10          THE WITNESS:   Again, I don't remember  
11   exactly everything that I testified to on May  
12   21st.   I'm happy to read that testimony now and  
13   answer your question and verify -- or give you the  
14   verification or confirmation that you seem to be  
15   asking me for.

16          But no, I didn't mention this.   I didn't  
17   mention everything about the decision or the issue  
18   in that testimony to Congress.   I was asked  
19   specific questions by congresspeople and gave  
20   answers to the best of my ability and recollection  
21   within the constraints that the Department of  
22   Justice places on witnesses who testify before

1 Congress.

2 Moreover, all it says here is that there  
3 were some career staff who made findings that  
4 suggested a particular thing, not that they had  
5 firmly reached that conclusion. And of course, as  
6 I mentioned before, it's up to Secretary Ross to  
7 make that determination as a matter of law, or at  
8 least that's my understanding.

9 BY MR. HO:

10 Q. I mean, this isn't an e-mail from just a  
11 random Census Bureau staffer. This is an e-mail  
12 from the acting director of the Census Bureau,  
13 correct?

14 MR. GARDNER: Objection. Argumentative.

15 THE WITNESS: I understand that  
16 Dr. Jarmin was the acting director of the Census  
17 Bureau, yes.

18 BY MR. HO:

19 Q. He is the acting director of the Census  
20 Bureau today, right?

21 A. That, I don't know. But sure, he could  
22 be.



1 Q. Okay. Are you satisfied that your  
2 testimony to Congress, which omitted Dr. Jarmin's  
3 proposal to meet with the DOJ to discuss the  
4 Census Bureau's findings that there was a way to  
5 produce higher quality data at lower cost aside  
6 from the census [sic] question -- are you  
7 satisfied that that was complete testimony to  
8 Congress?

9 A. Absolutely. I -- I testified completely  
10 and honestly to Congress on the matters that I was  
11 in a position to testify on.

12 Q. Your goal is to get the most complete and  
13 accurate CVAP data from the Census Bureau, right?

14 A. That would be the Department of Justice's  
15 goal. Yes.

16 Q. And despite having that goal, you did  
17 not -- and when I say "you," the Department of  
18 Justice did not have a meeting of its technical  
19 staff with the Census Bureau to discuss the Census  
20 Bureau's proposal to get higher quality CVAP data  
21 at lower cost, correct?

22 MR. GARDNER: Objection. Asked and

1 answered.

2 THE WITNESS: I believe that's correct.

3 BY MR. HO:

4 Q. Are you aware of any other circumstance  
5 where the Department of Justice asked the Census  
6 Bureau to collect data but then refused to have a  
7 technical meeting to discuss that data request?

8 A. I'm not aware of that, nor am I aware of  
9 any instance where the Census Bureau has offered  
10 that kind of meeting.

11 Q. All right.

12 (Gore Deposition Exhibit 22 marked for  
13 identification and attached to the  
14 transcript.)

15 BY MR. HO:

16 Q. This is marked as Exhibit 22. It's an  
17 e-mail from Ron Jarmin to Census Bureau personnel  
18 in the administrative record with Bates number  
19 9074.

20 In this e-mail, Dr. Jarmin is forwarding  
21 to Census Bureau personnel an e-mail that he had  
22 previously written on February 6th, 2018, to

1 Enrique Lamas and, it appears, Karen Dunn Kelley.

2 Do you see that?

3 A. I do see that.

4 Q. Dr. Jarmin writes to Ms. Kelley, "Karen,

5 I spoke with Jarmin is Gary. He has spoken with

6 DOJ leadership. They believe the letter

7 requesting citizenship be added to the 2020 census

8 fully describes their request. They do not want

9 to meet. Thanks, Ron."

10 Did I read that right?

11 A. Yes, you did.

12 Q. You're part of the DOJ leadership to whom  
13 Art -- Arthur Gary spoke about a possible meeting  
14 between the Census Bureau and DOJ, correct?

15 MR. GARDNER: Objection. Calls for  
16 speculation. Lack of foundation.

17 THE WITNESS: I don't know who Jarmin is  
18 Gary spoke to or who he was referring to. As I  
19 testified previously, I did talk to him about this  
20 issue.

21 BY MR. HO:

22 Q. Are you aware of anyone else speaking

1 with Arthur Gary about the decision over whether  
2 or not to meet with Census Bureau personnel to  
3 discuss their proposal to produce block-level CVAP  
4 data without a citizenship question?

5 A. I have no awareness on that one way or  
6 the other.

7 Q. Dr. Jarmin is correct that DOJ leadership  
8 did not want to meet to discuss the technical  
9 aspects of the citizenship question request,  
10 correct?

11 A. I'm sorry, can you repeat that question?

12 Q. Dr. Jarmin was correct that DOJ  
13 leadership did not want to have a technical  
14 meeting to discuss DOJ's request for block-level  
15 CVAP data, correct?

16 A. I believe that's correct.

17 Q. The reason you didn't want to have that  
18 meeting is because it was more important to the  
19 Department of Justice to get a citizenship  
20 question on the 2020 census questionnaire than to  
21 get accurate block-level CVAP data, correct?

22 MR. GARDNER: Objection. Calls for

1 record.

2 MR. GARDNER: Whatever you wish.

3 VIDEO TECHNICIAN: This concludes media  
4 unit number 4. The time on the video is 2:55 p.m.  
5 We are off the record.

6 (A recess was taken.)

7 VIDEO TECHNICIAN: This begins media unit  
8 number 5. The time on the video is 3:16 p.m. We  
9 are on the record.

10 BY MR. HO:

11 Q. Mr. Gore, as the head of the civil rights  
12 division, you want the civil rights division to  
13 have access to the most accurate CVAP data for  
14 purposes of VRA enforcement, right?

15 A. Right.

16 Q. You would like it if technical staff from  
17 the civil rights division could meet with the  
18 Census Bureau to discuss what the Census Bureau  
19 believes is the most accurate CVAP data for  
20 purposes of VRA enforcement, right?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, I think you're

1 Congress on May 8th.

2 BY MR. HO:

3 Q. Well, before Secretary Ross' decision  
4 memo -- that decision memo was in March of 2018,  
5 correct?

6 A. Sounds right.

7 Q. Okay. So before Secretary Ross' memo,  
8 you didn't know what the Census Bureau's views  
9 were about the most accurate form of CVAP data,  
10 correct?

11 A. That's probably correct. Yeah.

12 Q. Okay. So before March of 2018, as  
13 someone who wants the Department of Justice to  
14 have the most accurate CVAP data for VRA  
15 enforcement, you wanted to be able to have a  
16 meeting of DOJ technical staff with the Census  
17 Bureau to learn about the Census Bureau's views  
18 about the most accurate CVAP data, correct?

19 MR. GARDNER: Objection. Hypothetical.

20 THE WITNESS: That's a hypothetical.

21 MR. HO: It's not a hypothetical.

22

1 entry number 694. It refers to a document with  
2 the Bates number DOJ 30395.

3 Do you see that?

4 A. I do.

5 Q. The description of this document is that  
6 it is an e-mail from Brett Shumate to you dated  
7 March 25th, 2018, correct?

8 A. Yes.

9 Q. And the description of this document  
10 reads, "E-mail among DOJ attorneys discussed and  
11 providing legal advice on a draft of Commerce's  
12 decision memo concerning the reinstatement of a  
13 citizenship question on the census. The e-mail  
14 includes attorneys' thoughts and mental  
15 impressions concerning anticipated litigation and  
16 would reveal deliberative material that pre-dates  
17 Commerce's final decision memo."

18 Did I read that right?

19 A. Yes.

20 Q. Okay. So it's correct that you received  
21 a draft of Commerce's decision memo before the  
22 final memo became public, correct?

1           A.   That appears to be correct.   Yes.

2           Q.   You don't remember receiving a draft of  
3   Secretary Ross' decision memo directing the  
4   inclusion of a citizenship question from  
5   Mr. Shumate?

6           A.   No, I do recall that.   I was saying it  
7   appears to be correct based on the information you  
8   just read.

9           Q.   Okay.   Did you discuss or provide to  
10   Mr. Shumate legal advice on a draft of Commerce's  
11   decision memo concerning a citizenship question on  
12   the census?

13          A.   Yes.

14          Q.   Did Mr. Shumate share with you his  
15   thoughts or mental impressions concerning  
16   anticipated litigation over the citizenship  
17   question?

18          A.   Yes, I believe he did.

19          Q.   Did you share with Mr. Shumate any  
20   thoughts or mental impressions concerning  
21   anticipated litigation over the citizenship  
22   question?



1 BY MR. HO:

2 Q. This is Exhibit 24. The document and the  
3 attachment.

4 MR. GARDNER: Which one do you want to be  
5 24 and which do you want to be 25?

6 MR. HO: We'll make the e-mail 24 and the  
7 attached draft letter 25.

8 (Gore Deposition Exhibit 25 marked for  
9 identification and attached to the  
10 transcript.)

11 BY MR. HO:

12 Q. So 24 is an e-mail from Mr. Aguinaga to  
13 you dated June 13th, 2018, correct?

14 A. Yes.

15 Q. And it makes reference to attachments of  
16 draft responses to members of Congress, correct?

17 A. I believe that's correct.

18 Q. Okay. Exhibit 25 is a draft letter to  
19 Congresswoman Carolyn Maloney. Do you see that?

20 A. Yes.

21 Q. Okay. And I want to ask you about the  
22 draft letter, specifically, the second paragraph,

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1 the second sentence.

2 Before the red-line, that sentence  
3 appears to read, "As you noted, the department  
4 sent a letter to the Census Bureau asking that the  
5 Census Bureau reinstate a question regarding  
6 citizenship on the 2020 census questionnaire in an  
7 effort to obtain accurate data needed to protect  
8 against racial discrimination in voting."

9 Does that appear correct to you?

10 A. That appears to be correct, yes.

11 Q. It was revised to read, "As you noted,  
12 the department sent a letter to the Census Bureau  
13 asking the Census Bureau -- asking that the Census  
14 Bureau reinstate a question regarding citizenship  
15 on the 2020 census questionnaire in an effort to  
16 obtain the most accurate data to protect against  
17 racial discrimination in voting" with the  
18 word "needed" struck out, correct?

19 A. That appears to be correct.

20 Q. Okay. The comment bubble reads, "This  
21 edit is designed conform to the original JMD  
22 letter, which did not say the data was necessary,

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1 but did indicate it would assist our enforcement  
2 efforts. John's note to CIV specifically noted  
3 that the letter did not say the data  
4 was 'necessary,' and I think we should avoid that  
5 term."

6 Did I read that right?

7 A. Yes, you did.

8 Q. Okay. So is it correct, as this comment  
9 notes, that the December 12 letter requesting a  
10 citizenship question be added to the census did  
11 not say that it was necessary to collect CVAP data  
12 through the census questionnaire for VRA  
13 enforcement?

14 A. That is correct.

15 Q. And as the comment bubble indicates, you,  
16 Mr. Gore, have at some point specifically noted  
17 that the letter did not use the word "necessary"  
18 with respect to collecting CVAP data through the  
19 census questionnaire, correct?

20 A. That is what the comment says. Correct.

21 Q. And you -- my question was, you,  
22 yourself, have specifically noted that the

1 December 12 letter, the Gary letter, did not use  
2 the word "necessary" with respect to the inclusion  
3 of a citizenship question on the 2020 census,  
4 correct?

5 A. Yes, I have just noted that in my  
6 testimony. I will say I don't know -- I have no  
7 recollection of what this comment is referring to.

8 Q. You agree, right, Mr. Gore, that CVAP  
9 data collected through the census questionnaire is  
10 not necessary for DOJ's VRA enforcement efforts?

11 A. I do agree with that. Yes.

12 Q. I'm going to show you another document.  
13 We'll mark this as 26 and 27.

14 (Gore Deposition Exhibits 26 and 27  
15 marked for identification and attached to  
16 the transcript.)

17 BY MR. HO:

18 Q. 26 is an e-mail from Mr. Aguinaga to you  
19 dated June 12th, 2018, correct?

20 A. Yes, it is.

21 Q. And the subject is, QFR responses,  
22 correct?

1 A. That is correct.

2 Q. And there's an attachment of 2020 census  
3 hearing Gore QFRs CRT draft, correct?

4 A. Correct.

5 Q. Exhibit 27 has draft responses from you  
6 to questions posed by Congressman Jimmy Gomez,  
7 correct?

8 A. Yes, that's correct.

9 Q. The second answer on Exhibit 27 -- or the  
10 second question and answer on Exhibit 27 read, "To  
11 Mr. Gore: Is the DOJ and Attorney  
12 General Sessions still in agreement with that  
13 opinion? Is there any provision of any law that  
14 may compel census to disclose confidential census  
15 data for law enforcement or national security  
16 purposes?"

17 And the response, as drafted, reads, "No  
18 one should have to fear responding to the census  
19 questionnaire or to a citizenship question if, in  
20 fact, it is included. To that end, the department  
21 is committed to abiding by all laws protecting the  
22 confidentiality and non-disclosure of such

1 responses."

2 Did I read that right?

3 A. Yes.

4 Q. If we look back at Exhibit 26,  
5 Mr. Aguinaga's e-mail to you, the fourth sentence  
6 in his e-mail, beginning with the second draft  
7 answer at the end of the second line, it reads,  
8 "The second draft answer does not directly address  
9 the question because the question asks whether the  
10 department agrees with the 2010 OLC opinion and  
11 whether any law compels the disclosure of  
12 confidential questionnaire responses. I don't  
13 think we want to say too much there in case the  
14 issues addressed in the OLC opinion or related  
15 issues come up later for renewed debate."

16 Did I read Mr. Aguinaga's words  
17 correctly?

18 A. Yes.

19 Q. Okay. I'm going to show you a document  
20 which we'll mark as Exhibit 28.

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1 A. Yes, I do.

2 Q. Okay. This is a document from the  
3 administrative record. The first page is Bates  
4 number 1277.

5 You're familiar with this document?

6 A. No, I'm not.

7 Q. You've never seen this document before?

8 A. No, I don't believe I have.

9 Q. The fifth page of this document, Bates  
10 number 1281, the first paragraph, last sentence,  
11 about four lines from the bottom, reads, "It is,  
12 therefore, a reasonable inference that a question  
13 on citizenship would lead to some decline in  
14 overall self-response because it would make the  
15 2020 census modestly more burdensome in the direct  
16 sense, and potentially much more burdensome in the  
17 indirect sense, that it would need to a larger  
18 decline in self-response for non-citizen  
19 households."

20 Did I read that right?

21 A. Yes, you did.

22 Q. Okay. So before I read that to you, you

1 were not aware that the chief scientist of the  
2 Census Bureau had opined, based on an analysis of  
3 ACS data, that the inclusion of a citizenship  
4 question would lead to a larger decline in  
5 self-response for non-citizen households?

6 MR. GARDNER: Objection. Lack of  
7 foundation.

8 THE WITNESS: That is -- I'm not sure  
9 you've correctly characterized this statement.  
10 But no, I was not aware of this statement until  
11 just now.

12 BY MR. HO:

13 Q. Okay. So --

14 A. Or of the fact that Mr. -- I'm sorry. Is  
15 it Dr. Abowd? Mr. Abowd. I'm not sure. I've  
16 never met him.

17 Q. Abowd.

18 A. Abowd, thank you.

19 -- had espoused that view.

20 Q. So you're not aware that the Census  
21 Bureau has conducted an analysis of ACS response  
22 rates and, based on that analysis, has concluded



1 BY MR. HO:

2 Q. I'm not actually talking about  
3 Exhibit 32.

4 The chief scientist of the Census Bureau,  
5 I'm representing to you, has given deposition  
6 testimony in this litigation stating that the  
7 analysis conducted by the Census Bureau indicates  
8 that the best quantitative evidence that's  
9 available to the Census Bureau at present suggests  
10 to the Census Bureau and leads the Census Bureau  
11 to conclude that the inclusion of a citizenship  
12 question is likely to reduce self-response rates  
13 to the census questionnaire.

14 Do you understand the representation that  
15 I've just made to you?

16 A. I do. I can't verify whether it's  
17 accurate, since I'm not familiar with that  
18 deposition testimony.

19 Q. That's fine. But assuming that it is,  
20 does that concern you about the inclusion of a  
21 citizenship question on the census, given that the  
22 department that you run relies upon accurate

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1 would expect --

2 Q. It's actually a question about your  
3 current intentions.

4 A. My current intentions. I would expect  
5 that conversations like that could occur. Sure.

6 Q. Are there any planned meetings between  
7 the civil rights division and the Census Bureau  
8 about the effect that the citizenship question on  
9 the 2020 census is going to have on the accuracy  
10 of census data?

11 A. I'm not aware of any such meetings, nor  
12 do I know whether any such meetings would be  
13 productive at this point, since the 2020 census  
14 hasn't yet been conducted and nobody knows what  
15 the effect of the citizenship question on that  
16 particular census will be.

17 Q. Mr. Gore, are you aware of any other  
18 circumstance in which the Department of Commerce  
19 has reached out to the Department of Justice to  
20 see if the Department of Justice would request  
21 data from the Census Bureau?

22 A. I'm not aware of any other such instance,

1 no.

2 MR. HO: Can we go off the record?

3 VIDEO TECHNICIAN: We are going off the  
4 record. The time on the video is 3:57 p.m.

5 (A recess was taken.)

6 VIDEO TECHNICIAN: This begins media unit  
7 number 6. The time on the video is 4:15 p.m. We  
8 are on the record.

9 BY MR. HO:

10 Q. Mr. Gore, just to circle back on  
11 something we talked about earlier, when Attorney  
12 General Sessions made the decision for there not  
13 to be a meeting between DOJ technical staff and  
14 the Census Bureau, at that time, Secretary Ross  
15 had not yet issued his decision memo directing the  
16 inclusion of a citizenship question on the census,  
17 correct?

18 A. That is correct.

19 Q. So it's accurate to say, since that  
20 decision memo had not yet been issued, that that  
21 decision memo did not play any role in the  
22 decision that was made not to have a meeting

1 between Census Bureau and technical staff,

2 correct?

3 A. That is -- I believe that's correct.

4 Yes.

5 Q. Okay.

6 (Gore Deposition Exhibits 33 and 34

7 marked for identification and attached to

8 the transcript.)

9 BY MR. HO:

10 Q. I just want to show you two more  
11 documents that have been marked as Exhibits 33 and  
12 34.

13 33 is an e-mail from Ben Aguinaga to you  
14 and Prim Escalona dated April 6th, 2018, correct?

15 A. Are you referring to the e-mail at the  
16 top of the page?

17 Q. Correct.

18 A. Yes, that's correct.

19 Q. It's a thread, but the top e-mail is from  
20 Ben Aguinaga to you and someone else dated  
21 April 6th, 2018, correct?

22 A. That is correct.

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1 Q. Okay. And there are various attachments  
2 to this e-mail, one of which is census citizenship  
3 question briefing paper, correct?

4 A. That is correct.

5 Q. Okay. And if you look at Exhibit 34,  
6 it's a document titled, Census citizenship  
7 question.

8 This is the briefing paper that was  
9 attached to that e-mail, correct?

10 A. I can't verify that for sure, but --

11 Q. Does it appear to be?

12 A. It appears to be -- yes, it appears to be  
13 a briefing paper on that topic.

14 Q. Okay. And the subject is, AG prep for  
15 CJS Approps. hearing, correct?

16 A. That is correct.

17 Q. Okay. So this citizenship -- census  
18 citizenship question briefing paper, Exhibit 34,  
19 it's for the attorney general, correct?

20 A. That is correct.

21 Q. Okay. Exhibit 34, at the top, the first  
22 bullet under the section background reads, "Not

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1 public. In 2017, Secretary of Commerce Wilbur  
2 Ross requested that the Justice Department send a  
3 letter requesting the addition of a citizenship  
4 question on the 2020 census."

5 Is that statement accurate, as far as you  
6 know?

7 MR. GARDNER: Objection. Lack of  
8 foundation.

9 THE WITNESS: As far as I know, yes.

10 BY MR. HO:

11 Q. And when in 2017, if you know, did  
12 Secretary of Commerce Wilbur Ross request that the  
13 Justice Department send a letter requesting the  
14 addition of a citizenship question?

15 A. I don't know.

16 Q. And it's correct that, as of the date of  
17 this e-mail, April 6th, 2018, the fact that  
18 Secretary of Commerce Ross requested that the  
19 Justice Department send a letter requesting the  
20 addition of a citizenship question was not public,  
21 correct?

22 MR. GARDNER: Objection. Lack of

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1 foundation.

2 THE WITNESS: I believe that was -- I  
3 believe that's correct. I don't remember for  
4 sure.

5 BY MR. HO:

6 Q. And it's also correct that, as of  
7 April 6th, 2018, the Department of Justice was  
8 attempting to maintain the fact that  
9 Secretary Ross had requested that the Justice  
10 Department send a letter requesting the addition  
11 of a citizenship question -- that the Justice  
12 Department was attempting to maintain the fact  
13 that that information was not public, correct?

14 A. I'm not sure whether that's correct or  
15 not.

16 Q. Were you authorized, as of April 6th,  
17 2018, to publicly discuss the fact that the  
18 Secretary of Commerce had requested that the  
19 Justice Department send a letter requesting the  
20 addition of a citizenship question?

21 MR. GARDNER: Objection. Vague.

22 THE WITNESS: Yeah, I don't know what you

1 mean by that, but I don't know that I was  
2 authorized or not authorized to do so.

3 BY MR. HO:

4 Q. As far as you know, it had not yet been  
5 made public as of April 6th, 2018, that Secretary  
6 of Commerce Ross had requested the Justice  
7 Department send a letter requesting the addition  
8 of a citizenship question, correct?

9 A. As far as I know and can recall, that's  
10 correct.

11 Q. Why, if you know, was it not public by  
12 April 6th, 2018, that Secretary Ross had requested  
13 that the Justice Department send a letter  
14 requesting the addition of a citizenship question?

15 MR. GARDNER: Objection. Lack of  
16 foundation. Calls for speculation.

17 THE WITNESS: I don't know.

18 BY MR. HO:

19 Q. You don't know one way or the other?

20 A. I don't know one way or the other.

21 MR. HO: Okay. We can go off the record.  
22 I think those are all the questions --



1 BY MS. HULETT:

2 Q. Okay. But just so I'm clear on it, you  
3 have had discussions with Attorney  
4 General Sessions on the topic of whether  
5 apportionment or redistricting should be conducted  
6 using total population or some other measure?

7 MR. GARDNER: Objection to the extent it  
8 mischaracterizes the witness' previous testimony.

9 THE WITNESS: I stand by my prior answer  
10 that I had a conversation with the attorney  
11 general about the question of the use of total  
12 population or some other measure for apportionment  
13 purposes.

14 BY MS. HULETT:

15 Q. And you can't disclose that conversation  
16 because it was during the pre-deliberative process  
17 leading to the decision as to whether to request  
18 that the Census Bureau include a citizenship  
19 question on the decennial census?

20 A. That is correct.

21 Q. Okay. Have you had any conversations  
22 with anyone else about whether apportionment or

1 well. But I'm familiar that its current practice  
2 is to use the ACS data.

3 And the decennial census data obviously  
4 is only available every ten years, not every five  
5 years.

6 Q. I'd like to draw your attention back to  
7 this Exhibit 17, which is the December 12th,  
8 2017 -- I think we've been referring to it as the  
9 Gary letter.

10 A. Yes. Bear with me one moment. My  
11 exhibits are not in order.

12 Q. Okay.

13 A. Let me see if I can find it. Got it.  
14 Thank you.

15 Q. When you were -- do you see that you've  
16 cited several cases in this letter?

17 A. I see that the department has cited  
18 several cases in the letter. Yes.

19 Q. You drafted -- did the initial draft of  
20 this letter, correct?

21 A. That is correct.

22 Q. And when you were drafting the letter,

1 did you, personally, do the research that resulted  
2 in the citation to these particular cases or did  
3 someone else do it for you and send them to you?

4 MR. GARDNER: Objection. Calls for  
5 information subject to deliberative process  
6 privilege. I instruct the witness not to answer.

7 THE WITNESS: Consistent with that  
8 instruction, I can't answer.

9 BY MS. HULETT:

10 Q. So you can't tell me whether you chose  
11 these cases or whether someone else chose these  
12 cases for inclusion in the letter because that's  
13 deliberative process? I just want to make sure I  
14 understand what you're refusing to answer.

15 A. Yes. That's on the instruction of  
16 counsel.

17 Q. Okay. Did you read the opinions that are  
18 cited in the letter?

19 A. Yes, I did.

20 Q. How recently have you read the opinions?

21 A. Well, let me look at which opinions we're  
22 talking about.

1 Q. Well, to start with, I'm talking about  
2 Reyes versus City of Farmers Branch, Barnett  
3 versus City of Chicago, Negrón versus City of  
4 Miami Beach, Romero versus City of Pomona, and  
5 LULAC versus Perry.

6 A. I read all of those cases before this  
7 letter was sent. And I may have read the LULAC  
8 versus Perry decision more recently than that.

9 Q. And before you list these cases, the  
10 sentence right before the cases in the second  
11 paragraph says, "Multiple federal courts of appeal  
12 have held that, where citizenship rates are at  
13 issue in a vote dilution case, citizen voting age  
14 population is the proper metric for determining  
15 whether a racial group could constitute a majority  
16 in a single-member district."

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. These are all appellate court or Supreme  
20 Court cases. Did you read any of the lower court  
21 opinions in these cases?

22 A. I believe I did. Yes.

1 Q. And do any of these appellate court  
2 opinions that are cited in this paragraph hold  
3 that long-form data or ACS survey data is  
4 deficient or unsuitable for use in a Section 2  
5 analysis?

6 MR. GARDNER: Objection. Compound.

7 THE WITNESS: I don't believe so.

8 BY MS. HULETT:

9 Q. Would you agree that the Supreme Court  
10 has not yet adopted a standard requiring proof of  
11 citizen voting age majority to meet the prong 1  
12 Gingles test?

13 A. I think you're asking me for a legal  
14 conclusion, and I don't believe the Supreme Court  
15 has addressed that question squarely. The LULAC  
16 versus Perry decision does analyze vote dilution  
17 claims by reference to citizen voting age  
18 population. That's a case out of the State of  
19 Texas. And that's my recollection of that case.

20 But to the extent you're asking me for a  
21 legal opinion, I don't know that I can provide  
22 one.

1 (Gore Deposition Exhibit 39 marked for  
2 identification and attached to the  
3 transcript.)

4 BY MS. HULETT:

5 Q. I'd like to show you Exhibit 39, which is  
6 a series of January 2nd, 2018, e-mails between you  
7 and Devin O'Malley regarding review of a statement  
8 in response to citizenship question on census.

9 Who is Devin O'Malley?

10 A. Devin O'Malley at the time was employed  
11 in the Department of Justice's Office of Public  
12 Affairs.

13 Q. Is that a Ms. or a Mr.?

14 A. Mr.

15 Q. Do you recall this exchange, this e-mail  
16 exchange?

17 A. Yes, I do.

18 Q. On page 2, Mr. O'Malley asks you at  
19 4:28 -- it's right in the center of the page on  
20 page 2 -- "There's no reason I can't point the  
21 reporter to the Constitution on background and  
22 make the point that there's somewhat of a

1 constitutional basis for using the census in this  
2 process and not the ACS, right?"

3 And right above it is your response:  
4 "It's a little bit of a stretch, but it's okay  
5 with me."

6 How is there a constitutional basis for  
7 using a census rather than the ACS to collect  
8 citizenship data?

9 A. Unlike the ACS, the census is actually  
10 mentioned in the Constitution. The Constitution  
11 directs the federal government to conduct a census  
12 every ten years. There's no mention of the ACS in  
13 the Constitution.

14 Q. The ACS is run by the Census Bureau,  
15 right -- conducted by the Census Bureau?

16 A. Yes.

17 Q. But you don't consider it to be part of  
18 the census?

19 A. I consider -- I believe what Mr. O'Malley  
20 is referring to here is a decennial census versus  
21 the ACS. I understand the ACS is not part of the  
22 decennial census.

1 Q. And what did you mean that it's a  
2 stretch?

3 A. I believe what I meant was it's certainly  
4 correct that the census is mentioned in the  
5 Constitution and that the ACS isn't. But I  
6 wasn't -- I don't believe that that was a reason  
7 mentioned in the Gary letter for seeking  
8 reinstatement of the citizenship question on the  
9 census questionnaire.

10 Q. And you think the argument is a bit of a  
11 stretch?

12 A. Which argument?

13 Q. The argument that the Constitution  
14 supports -- that there's a constitutional basis  
15 for using the decennial census instead of the ACS.

16 A. I -- yeah, I believe that's a little bit  
17 of a stretch.

18 Q. On page 3, in another e-mail from you in  
19 this exchange at 4:04, you say, "Unfortunately,  
20 it's not accurate to blame the prior  
21 administration for abandoning the citizenship  
22 question on the census questionnaire. That move



1 BY MS. HULETT:

2 Q. Can you name any case in which a court  
3 required for prong 1 purposes any level of  
4 certainty about the margin of error in each and  
5 every block of the district?

6 A. Again, I can't name such a case, as I sit  
7 here today either way.

8 Q. So is the point that's being expressed in  
9 this bullet is that citizenship data from the ACS  
10 is not ideal for purposes of redistricting because  
11 it's an estimate with a margin of error that  
12 increases for smaller geographic areas?

13 A. I think the bullet speaks for itself. I  
14 believe it does mention the margin of error and  
15 the increase in that margin of error as the  
16 geographic area decreases. It also mentions the  
17 90 percent confidence interval associated with the  
18 ACS.

19 Q. So when you're drawing a district and you  
20 want to know what percent of adult citizens are of  
21 a particular racial group, let's say, Latinos, and  
22 when you look at the margin of error for the

1 increases; is that correct?

2 Q. Yes.

3 A. That's my understanding.

4 Q. So when you combine block groups into  
5 census tracts and then combine the census tracts  
6 into districts, the margin of error shrinks each  
7 time as the level of geography grows?

8 A. I'm not sure what you mean by combining  
9 all of that. I do believe the ACS estimates are  
10 reported at certain levels and, at a larger  
11 geographic area, there is a smaller margin of  
12 error assigned to the ACS estimate than at a  
13 smaller geographic area.

14 Q. All right. Say at the level of a typical  
15 congressional district, you would expect the  
16 margin of error on CVAP to be much smaller than  
17 the margin of error in each block in that  
18 district, correct?

19 A. I would -- with respect to ACS estimates?

20 Q. Yes.

21 A. Yes. And I would expect that with  
22 respect to any statistical sampling or with

1     respect to hard count data.

2           Q.   And by the time you get to the size of a  
3   congressional district, the margin of error is  
4   likely to be quite small; isn't that correct?

5           A.   I don't know what you mean by quite  
6   small.   I mean, you could certainly conceive of  
7   districts or hypothetical districts where the  
8   margin of error would still matter at the size of  
9   a congressional district or a state house or state  
10   senate district.   You might have a hypothetical  
11   district that is close to the line of 50 percent,  
12   but because of the margin of error associated with  
13   the ACS data, you wouldn't know one way or the  
14   other whether it's over 50 percent or slightly  
15   under 50 percent.

16               And that's what we are trying to avoid.  
17   We are trying to get the best possible, most  
18   accurate, more reliable, most comprehensive and  
19   complete data that we possibly can because --  
20   there's been a lot of talk today about file cases.  
21   We're trying to identify good cases for  
22   investigation and filing.

1 prosecutions on that basis, at least at all  
2 recently. And I think I might have read something  
3 once that suggested there might have been one  
4 decades ago, but I don't know that for sure.

5 Q. And just a few final questions. Have you  
6 ever communicated in any way -- by phone, in  
7 person, by e-mail, text -- have you ever  
8 communicated about the citizenship question with  
9 Kris Kobach?

10 A. No.

11 Q. Have you ever communicated in any of  
12 those ways about the citizenship question with  
13 Steve Bannon?

14 A. No.

15 Q. Have you ever communicated in any of  
16 those ways about the citizenship question with  
17 Stephen Miller?

18 A. No.

19 Q. Have you ever communicated with anyone at  
20 the White House about the citizenship question?

21 A. Yes.

22 Q. Who?

1 A. I communicated with John Zadrozny.

2 Q. And who is he?

3 A. Z-a-d-r-o-z-n-y, I believe, is how he  
4 spells his last name. And at the time, he was  
5 working, I believe, for the Domestic Policy  
6 Council.

7 Q. And when did you communicate with him?

8 A. I believe it was sometime in October of  
9 2017.

10 Q. Who initiated the contact?

11 A. I don't recall. What I recall about it  
12 is that I participated in a conference call on the  
13 issue on which Mr. Zadrozny -- in which  
14 Mr. Zadrozny also participated.

15 Q. Conference call on the issue of adding  
16 the citizenship question?

17 A. That's correct.

18 Q. In October of 2017?

19 A. I believe it was October of 2017.

20 Q. Who else was on that conference call?

21 A. I can recall that other people from the  
22 Department of Justice were on the call. Rachael

1 Tucker, who we've discussed previously, and Gene  
2 Hamilton I believe was on the call. And there may  
3 have been others, but I can't remember  
4 specifically who they were.

5 Q. Other than the addition of the  
6 citizenship question to the census, was that the  
7 only topic --

8 A. Yes.

9 Q. -- discussed in the call?

10 A. Yes, it was.

11 Q. And were there people from the Department  
12 of Commerce on that call?

13 A. No, there were not. Or at least not to  
14 my knowledge.

15 Q. So to your knowledge, it was one White  
16 House official, and the rest of you were all from  
17 the Department of Justice?

18 A. To the best of my knowledge and  
19 recollection, yes.

20 Q. And who set up this conference call?

21 A. I don't recall who set it up. I know it  
22 wasn't me.

1 Q. Do you know at whose request the  
2 conference call happened?

3 A. I do not recall that.

4 Q. And did you know before the call why you  
5 were invited?

6 A. Yes.

7 Q. And why were you invited?

8 A. Because I was involved in this issue on  
9 behalf of the Department of Justice.

10 Q. And did the -- John -- I'm sorry, how do  
11 you say his name again?

12 A. I think it's Zadrozny, but I don't know  
13 for sure.

14 Q. Zadrozny. Do you remember what he  
15 contributed to that conference call?

16 MR. GARDNER: Objection. That question  
17 calls for the disclosure of information subject to  
18 executive privilege.

19 To the extent you can answer that  
20 question without divulging such information, you  
21 may. Otherwise, I instruct you not to answer.

22 THE WITNESS: Consistent with that

1 Gary letter, because that's not what it says.

2 Q. Does the Gary letter say that citizenship  
3 data provided from decennial census questionnaires  
4 is critical to Section 2 enforcement?

5 A. I think the Gary letter speaks for  
6 itself, and I think there's no dispute that  
7 citizenship data is crucial -- accurate  
8 citizenship data is crucial to carrying out the  
9 Department of Justice's Section 2 enforcement  
10 mission.

11 Q. Do you -- are you of the view that that  
12 citizenship data needs to be taken from decennial  
13 census questionnaires?

14 A. And by "you," are you referring to the  
15 Department of Justice or me personally?

16 Q. I'm referring to you, personally.

17 A. No.

18 Q. Okay. All right. And then is there  
19 anything else in the Karlan report that you would  
20 characterize as inaccurate?

21 A. There are a couple of things that come to  
22 mind. Again, if I had time to read it all, I



1 Q. Going back to Exhibit 17 --

2 A. Yes.

3 Q. -- the Gary letter. In the Gary letter,  
4 when talking about how the citizenship data is  
5 critical to the department's enforcement of  
6 Section 2 of the Voting Rights Act, was that only  
7 with reference to Gingles 1 or was it reference to  
8 any other aspect of Section 2 enforcement?

9 A. Well, I believe the letter speaks for  
10 itself. Is there a particular sentence you're  
11 referring to?

12 Q. Sure. I'm just -- I'm referring to -- in  
13 the first paragraph --

14 A. Okay.

15 Q. -- at the end, it says that, "As  
16 demonstrated below, the decennial census  
17 questionnaire is the most appropriate vehicle for  
18 collecting that data and reinstating a question on  
19 citizenship will best enable the department to  
20 protect all American citizens' voting rights under  
21 Section 2."

22 A. Well, as I've just laid out, we do use

1 citizenship data at all three steps of the Gingles  
2 analysis. The letter speaks for itself in terms  
3 of what it talks about. And --

4 Q. Does the letter in any place mention any  
5 other aspect of Section 2 enforcement other than  
6 Gingles 1?

7 A. I don't believe that it does, but I don't  
8 know -- again, I haven't gone back and reviewed  
9 all these cases recently, so I don't know what  
10 they do or do not say or may or may not say with  
11 respect to the use of citizenship data, Gingles  
12 steps 2 and 3.

13 Q. You don't see anything in the letter,  
14 correct, that references any aspect of how this  
15 data is relevant to Section 2 enforcement other  
16 than with respect to Gingles 1, correct?

17 A. I don't see anything like that. That's  
18 correct.

19 Q. And isn't it the case that the  
20 department, in making a request to the Census  
21 Bureau about the need for -- the need for having a  
22 citizenship question on the census and why it's

1 the term "jurisdictions"?

2 A. I am not familiar with any redistricting  
3 plan that's ever been drawn by someone who wasn't  
4 a map drawer, so yes.

5 Q. All right. Have you -- strike that.

6 Has any map drawer, outside of somebody  
7 employed by the federal government, ever  
8 communicated to you that it would be better if the  
9 citizenship data were in the same data set as the  
10 total population data?

11 MR. GARDNER: Could you re-ask that  
12 question again? I'm sorry. I missed the first  
13 clause.

14 MR. GREENBAUM: Can you read it back?  
15 (The reporter read the record as  
16 requested.)

17 THE WITNESS: I don't know who you mean  
18 by "you." If you mean the Department of Justice,  
19 I can't answer that question because I don't know  
20 what conversations have happened between map  
21 drawers outside of the federal government and  
22 members of the Department of Justice.

1 BY MR. GREENBAUM:

2 Q. I mean you, John Gore.

3 A. Me, personally? I don't believe I've  
4 ever had any such conversation that I can recall.

5 Q. At the time that the Gary letter was  
6 issued on December 12th, did you know what the  
7 position of the Census Bureau was that --  
8 regarding whether citizenship data would be more  
9 accurate if there was a citizenship question on  
10 the census?

11 MR. GARDNER: Objection. Assumes facts  
12 not in evidence.

13 THE WITNESS: I'm not sure I have a basis  
14 to answer that question.

15 BY MR. GREENBAUM:

16 Q. I'm asking you whether you knew, yes or  
17 no.

18 A. Whether I knew what?

19 Q. Okay. I'll --

20 A. Sorry, can you just rephrase the  
21 question?

22 Q. -- go back -- I will state the question

1 not have authority or standing to assert such  
2 constitutional claims. The Department of Justice  
3 has, in the past, gotten involved in racial  
4 gerrymandering claims, either as an intervenor or  
5 as an amicus because frequently those claims  
6 implicate districts that were drawn or preserved  
7 to comply with Section 2 or Section 5 of the  
8 Voting Rights Act, which the Department of Justice  
9 does enforce.

10 Q. So a citizenship question would not help  
11 DOJ bring racial or partisan gerrymandering claims  
12 because DOJ doesn't have jurisdiction to bring  
13 them in the first place, correct?

14 A. That's correct, although it would  
15 facilitate DOJ's participation in such cases if it  
16 chose to participate for -- because, again,  
17 particularly, racial gerrymandering cases can  
18 implicate Section 2 and Section 5 districts where  
19 CVAP data is not necessary.

20 Q. Prior to December 12th, 2017, did you  
21 have any communication with anybody who was not a  
22 federal employee at the time about having a

1 citizenship question on the census?

2 A. Yes.

3 Q. Who?

4 A. I had a conversation with a gentleman  
5 named Mark Neuman, who I believe was not a federal  
6 employee at the time.

7 Q. Who is Mark Neuman?

8 A. I understand Mark Neuman to be a former  
9 employee of the Census Bureau or the Department of  
10 Commerce -- I'm not sure which one. And I  
11 understood that he was advising the Department of  
12 Commerce and the Census Bureau with respect to  
13 this issue.

14 Q. And what was the substance of your  
15 conversation with Mr. Neuman?

16 MR. GARDNER: Objection. Calls for  
17 information subject to deliberative process  
18 privilege. I instruct the witness not to answer.

19 THE WITNESS: Consistent with that  
20 instruction, I can't answer.

21

22 BY MR. GREENBAUM:

1 MR. GARDNER: Objection. Calls for  
2 information subject to deliberative process  
3 privilege. I instruct the witness not to answer.

4 THE WITNESS: Consistent with that  
5 instruction, I can't answer.

6 BY MR. GREENBAUM:

7 Q. Okay. Mr. Ho earlier showed you a map  
8 that had the number of people in particular census  
9 blocks in it. Do you recall that?

10 A. I do recall that.

11 Q. And some of those blocks had one person  
12 in the census block, correct?

13 A. That is correct.

14 Q. And if the Census Bureau were providing  
15 census data at the block level, isn't it true  
16 that, for those census blocks that have one  
17 person, that that person's answer to the census  
18 question regarding citizenship would be revealed  
19 in the data itself?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Again, I believe I had this

1 discussion with Mr. Ho earlier. I don't know the  
2 answer to that question. It's a hypothetical  
3 question.

4 Mr. Ho also talked about data masking  
5 techniques that the Census Bureau might use. I  
6 don't know how those would implicate the answer to  
7 the question. I don't know how the Census Bureau  
8 is planning to report the results of this data or  
9 this question from the questionnaire to the  
10 Department of Justice.

11 There's a lot I don't know, so I can't  
12 take a view on that and I, unfortunately, can't  
13 answer your question.

14 BY MR. GREENBAUM:

15 Q. But if it were the case that the Census  
16 Bureau was providing the block-specific --  
17 accurate block-specific data for blocks that have  
18 one person in it, that it would reveal the  
19 citizenship status as reported by that person?

20 A. Again, I've answered this question. I  
21 don't think I can add anything to my answer. It's  
22 a hypothetical. I don't know, again, how that



1 data is going to be reported and whether your  
2 definition of accurate includes any data masking  
3 techniques that Mr. Ho referred to earlier.

4 To the extent it would reveal that  
5 information, it would also reveal information  
6 responsive to the other questions on the census,  
7 which include questions about sex, race, Hispanic  
8 origin, and sexual orientation. And if those  
9 questions were all -- the results of those  
10 questions were also divulged, that information, I  
11 guess, would be available on parity with the  
12 response to the citizenship question.

13 Q. You may have answered this earlier, but  
14 I'm going to ask it again. Who decided that the  
15 Department of Justice would request that the  
16 Census Bureau add a citizenship question to the  
17 census?

18 A. I believe I've answered that earlier, and  
19 it was the attorney general.

20 Q. Okay. And do you recall the date in  
21 which the attorney general made that decision?

22 A. I don't know exactly when he, in his own

1           A. It appears to. And Ben Aguinaga is also  
2       copied on some of those e-mails.

3           Q. And do the e-mails reflect that you asked  
4       Mr. Herren for comments and edits to the draft  
5       letter that was a -- that was the first draft that  
6       you discussed this morning of what became the  
7       December 12th letter?

8           A. The e-mail on the bottom of page 1,  
9       carrying over to the top of page 2, appears to be  
10      an e-mail that I've already discussed today. And  
11      yes, it does appear to be an e-mail conveying a  
12      draft to Chris Herren and asking for his comments  
13      and edits regarding that particular draft.

14          Q. And did Mr. Herren provide comments and  
15      edits on or about November 3rd?

16          A. Yes, he did.

17          Q. And do you recall sharing any subsequent  
18      drafts of what became the December 12th letter  
19      with Mr. Herren?

20          A. I don't recall one way or the other.

21          Q. Do you recall him giving you comments on  
22      any subsequent drafts?

1           A.   I don't recall one way or the other.

2           MR. GREENBAUM: All right. I want to  
3 mark as Exhibit 46 a series of e-mails. At the  
4 top is an e-mail from John Gore to Chris Herren.  
5 It's marked as DOJ 28354.

6           (Gore Deposition Exhibit 46 marked for  
7 identification and attached to the  
8 transcript.)

9 BY MR. GREENBAUM:

10          Q. Mr. Gore, do you recognize these e-mails?

11          A. I'm not sure whether I recognize these  
12 e-mails, but I -- I believe I recall them.

13          Q. Okay. Do you recall responding to  
14 questions from the civil division about the census  
15 citizenship question litigation case?

16          A. Yes, I do.

17          Q. And do you recall seeking Mr. Herren's  
18 comments?

19          A. Yes, I do.

20          MR. GREENBAUM: All right. I'm going to  
21 mark as Exhibit 47 a document that you probably  
22 recognize, but I want to make sure we've got it in

1 NEW YORK IMMIGRATION COALITION, et al., vs.

2 UNITED STATES DEPARTMENT OF COMMERCE, et al.

3 JOHN GORE

4  
5 ACKNOWLEDGMENT OF DEPONENT

6 I, \_\_\_\_\_, do hereby certify  
7 that I have read the foregoing pages and that the  
8 same is a correct transcription of the answers given  
9 by me to the questions therein propounded, except for  
10 the corrections or changes in form or substance, if  
11 any, noted in the attached Errata Sheet.

12  
13  
14 \_\_\_\_\_  
15 DATE

14 \_\_\_\_\_  
15 SIGNATURE

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22 PA 3072371

# EXHIBIT E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
Defendants.  
-----

Washington, D.C.

Monday, August 20, 2018

Deposition of:

DR. RON JARMIN

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSEN,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:03 a.m., when were present on  
behalf of the respective parties:

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

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1 A P P E A R A N C E S

2 On behalf of New York Immigration  
3 Coalition, CASA De Maryland, American-Arab  
4 Anti-Discrimination Committee, ADC Research  
5 Institute and Make the Road New York:

6 David Gersch, Esquire  
7 Peter Grossi, Esquire  
8 Caroline Kelly, Esquire  
9 ARNOLD & PORTER

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 On behalf of New York Immigration Coalition:

17 Sarah Brannon, Esquire  
18 AMERICAN CIVIL LIBERTIES UNION

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

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6 David Brody, Esquire

Dorian Spence, Esquire

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5 [REDACTED] [REDACTED]  
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22

1     ALSO PRESENT:     Herman Habermann  
                                  Katherine Wallman

2  
   VIDEOGRAPHER:     Solomon Francis

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1 P R O C E E D I N G S

2 WHEREUPON,

3 MR. YEOMANS: I'd like the same order as  
4 Dr. Abowd.

5 VIDEOGRAPHER: Good morning. We're going  
6 on the record at 9:03 a.m., August 20, 2018. This  
7 begins Media Unit 1 of the video recorded  
8 deposition of Dr. Ron Jarmin taken in the matter  
9 of New York Immigration Coalition, plaintiffs  
10 v. U.S. Department of Commerce and all defendants,  
11 Case Number is 1:18-CV-05025-JMF and  
12 1:18-CV-2921-JMF filed in the U.S. District Court  
13 for the Southern District of New York.

14 This deposition is being held at the law  
15 office of Arnold & Porter Kaye Scholer, LLP,  
16 located 601 Massachusetts Avenue Northwest,  
17 Washington D.C.

18 My name is Solomon Francis with the firm  
19 of Veritext Legal Solutions. I am the  
20 videographer. The court reporter is  
21 Karen Jorgenson with Veritext Legal Solutions.  
22 Counsels' appearances will be noted on the

1 stenographic record.

2 Will the court reporter please swear in  
3 the witness, and you may proceed?

4 DR. RON JARMIN,  
5 called as a witness, and having been first duly  
6 sworn, was examined and testified as follows:

7 THE WITNESS: Yes, I do.

8 EXAMINATION BY MS. GOLDSTEIN:

9 Q Can you please state your name for the  
10 record?

11 A Ron Jarmin.

12 Q Good morning. My name is  
13 Elena Goldstein. I'm one of the attorneys for the  
14 State of New York in this case, and I'll be  
15 starting the deposition today.

16 Have you ever been deposed before?

17 A Not like this, no.

18 Q So I'm just going to go through some of  
19 the basic ground rules. I'm going to ask, because  
20 we have the court reporter who is taking down all  
21 of my questions and your answers, that you ask --  
22 answer questions orally rather than nodding your



1           Q    So it is fair to say that questions on  
2   the census also need to show a statutory or  
3   regulatory need, correct?

4           A    Uh-huh.   Yes.

5           Q    Thank you.

6                   Does the Census Bureau solicit questions  
7   or new data requests from the agencies?

8           A    So, yeah. There is a process where we  
9   inform people, and, you know -- so the ACS goes  
10   through a content review and agencies participate  
11   in that.

12          Q    Does the Census also go through a content  
13   review?

14          A    Typically not, no. Not that I recall.

15          Q    Is there a timeline by which the  
16   Census Bureau asks agencies if they have new data  
17   needs?

18          A    So I would say -- I mean, there was a  
19   content review for the -- for the ACS, and I think  
20   agencies are informed of that. But agencies often  
21   approach us outside of that review, as well.

22                   (Plaintiffs' Exhibit 1, Gary letter, was

1 employer, business in the country. A number of  
2 current economic indicator surveys, monthly retail  
3 trade, wholesale trade, those sorts of things.

4 Q Okay. I'll take that back.

5 When did you first learn of the  
6 possibility of adding a citizenship question to  
7 the census?

8 A So I think around the time that  
9 John Thompson was retiring, I had -- I had  
10 heard -- I think from John, but I'm not exactly  
11 sure -- that there was interest in a citizenship  
12 question, which is, you know, not a necessarily  
13 new thing. There was interest in the citizenship  
14 question in 2010, as well. So that's -- that's --  
15 but other than a vague notion that there may be  
16 folks asking for a citizenship question, that was  
17 the extent of my knowledge of that.

18 Q And when was that conversation with  
19 Mr. -- Dr. Thompson?

20 A So that would have been May, June-ish of  
21 2017.

22 Q And what do you recall Dr. Thompson

1     telling you about the citizenship question?

2           A     Basically what I just -- that there may  
3     be interest putting it on there.     It was not a  
4     particularly detailed conversation.

5           Q     Do you remember asking him questions  
6     about that?

7           A     No.

8           Q     Do you remember anything else about that  
9     conversation?

10          A     No.     It was a conversation about, you  
11     know, him leaving, and Enrique and I sort of  
12     taking over.     So it was, you know, all the fun  
13     stuff that was in store for us.

14          Q     I'm sure that's a big list.

15          A     It was a big list.

16          Q     Sure.

17                     When was the next time you heard about  
18     the possibility of a citizenship question being  
19     added to the census?                     401/403

20          A     Probably shortly before the -- the letter  
21     came from Art Gary.

22          Q     Tell me how you learned about this.

1           A     Folks at the department were asking  
2     if -- were saying that a letter was forthcoming --

3           Q     And when you --

4           A     -- and that we should be looking out for  
5     it.

6           Q     And when you say "the Department," what  
7     do you mean?

8           A     Department of Commerce.

9           Q     And who told you this, that you should be  
10    looking out for this?

11          A     I don't recall exactly who told me. But  
12    I think, you know -- I think there was multiple  
13    people that expressed, so, you know, I think  
14    Earl Comstock and Karen Dunn Kelley had both  
15    expressed, but I think I actually learned it from  
16    somebody else before that, so.

17          Q     Do you remember who you learned it from?

18          A     I don't.

19          Q     What were your conversations with  
20    Comstock?

21          A     Well, there were no --

22               MS. BAILEY: Objection. Vague.

1 THE WITNESS: So there were no 401/403  
2 conversations. It was -- it was information  
3 transfer. I was told to keep an eye out for a  
4 letter. We didn't have any conversations.

5 BY MS. GOLDSTEIN:

6 Q So how were you told to keep an eye out  
7 for a letter?

8 A We're expecting a letter from the  
9 Department of Justice, you know, keep an eye out  
10 for.

11 Q Was that an oral conversation or  
12 email --

13 A Yes. It was oral.

14 Q And what did -- did you have  
15 communications with Karen Dunn Kelley prior to  
16 receiving the letter?

17 A Yeah. It would have been the same  
18 nature. Nothing in detail.

19 Q Did you have any conversations with  
20 Secretary Ross about adding a citizenship question  
21 prior to receiving the Gary letter?

22 A No.

1 Q With Wendy Teramoto?

2 A No.

3 Q Any other communications with anyone from  
4 the Department of Commerce about the citizenship  
5 question --

6 A No.

7 Q -- before you received --

8 A No.

9 Q -- the letter?

10 A No.

11 Q And I'm just going to ask just for the  
12 record --

13 A That's fine.

14 Q -- I know that my questions are often  
15 going to be really predictable, and that's really  
16 just for the Court and for the transcript, if I  
17 can finish first and then you answer.

18 A Go ahead.

19 Q Thank you.

20 So how many days prior to receiving the  
21 Gary letter did you hear about the possibility of  
22 a citizenship question? 401/403

1           A    I don't recall for sure.   I would say not  
2   much more than a couple weeks.

3           Q    And after you learned a couple weeks  
4   before receiving this Gary letter that this  
5   request was coming, what did you do?

6           A    We didn't do anything in particular.

7           Q    What did you do in general?

8           A    I mean, nothing.   Kept an eye out for the  
9   letter.

10          Q    Did you tell anyone in Census to also  
11   keep an eye out for this letter?

12          A    So, yeah.   You know, my assistant, folks  
13   in -- in our correspondence office, you know.

14          Q    Anyone else?

15          A    I don't think so, no.

16          Q    Did you speak to Dr. Abowd about it?

17          A    I don't recall having a particular  
18   conversation about the citizenship letter or  
19   anything, but, you know, with anyone, other than  
20   front office staff before the -- so.

21          Q    Did you start any preparations for that  
22   letter prior to receiving it?

1 they wanted a question.

2 BY MS. GOLDSTEIN:

3 Q Do you remember any other details?

4 A Of -- prior to the letter?

5 Q Exactly.

6 A No.

7 Q Okay.

8 (Plaintiffs' Exhibit 2, Email, was  
9 marked.)

10 BY MS. GOLDSTEIN:

11 Q I'm showing you what's been marked as  
12 Plaintiffs' Exhibit 2. Is there a difference  
13 between wanting a question and wanting citizenship  
14 information?

15 MS. BAILEY: Objection. Vague.

16 THE WITNESS: So there -- there is.  
17 There's the need for the data, and then there's  
18 how you source the data to fulfill that need.

19 BY MS. GOLDSTEIN: 401/403

20 Q Can you explain a little bit more to me?

21 A So there's often multiple sources of  
22 information that could be used to either fully or



1 partially meet a particular measurement objective.  
2 And so the Census Bureau often explores whether  
3 there's a nonsurvey source that we could use  
4 rather than putting a burden on the public through  
5 a survey question.

6 Q So is it fair to say that a citizenship  
7 question is one way to get that data?

8 A Yes.

9 Q And there are other ways, as well?

10 A In this case, yes.

11 Q Okay. So let's look at this Exhibit 2.  
12 It is Bates number 1332. Do you recognize this  
13 document?

14 A Yeah, I guess.

15 Q What is it?

16 A An email.

17 Q This is an email from Aaron Willard dated  
18 12/15/2007 [sic] to you, correct?

19 A Uh-huh.

20 Q I'm sorry. You need yes or no.

21 A Yes.

22 Q Thank you.

1 Plaintiffs' Exhibit 4. It's Bates stamp 1357.

2 Do you recognize this document?

3 A Yes.

4 Q What is it?

5 A An email.

6 Q Are these emails that you received or  
7 sent?

8 A Looks like one of each.

9 Q So if you go to the bottom on  
10 Monday, December 18th, you email  
11 Karen Dunn Kelley, "any news"; is that correct?

12 A Yes.

13 Q What are you referring to?

14 A So I don't recall this exactly, but I  
15 think we were -- Barry Robinson, who was at OGC at  
16 the time, was reaching out to Art Gary at DOJ to  
17 see if we could set up a time to discuss the  
18 letter. 401/403/802

19 Q What is OGC?

20 A Office of General Counsel.

21 Q And is that -- which department is that?

22 A Commerce.

1 Q And why was Barry reaching out to Gary to  
2 set up a time to discuss the letter? 401/403

3 A So I believe that Barry knew Gary,  
4 and, you know, we wanted -- we wanted to meet with  
5 them to discuss their request.

6 Q Why is that?

7 A Because we typically meet with folks who  
8 have a data request.

9 Q And what's the purpose of that meeting?

10 A To understand their -- their needs.

11 Q Can you tell me a little bit more?

12 A So to have them describe what they need  
13 from a technical perspective so that we can best  
14 understand how we would go about seeing if we  
15 could fulfill it.

16 Q Who typically attends those meetings?

17 A Usually, methodologists and technical  
18 people.

19 Q From?

20 A From Census, along with the subject  
21 matter experts from the requesting organization.

22 Q Who are the subject matter experts that

1 would attend -- that would typically attend from  
2 the Department of Justice? 401/403

3 A So in this case, I guess it would be the  
4 folks that were involved in Voting Rights Act  
5 enforcement.

6 Q Do you know who those people are?

7 A I don't have firsthand knowledge, no.

8 Q Do you know what job titles they have?

9 A I can't tell you.

10 Q Are there statisticians or methodologists  
11 at the Department of Justice who are involved in  
12 voting rights enforcement? 602/401/403

13 MS. BAILEY: Objection.

14 THE WITNESS: I don't know.

15 BY MS. GOLDSTEIN:

16 Q Why is it important to have a meeting to  
17 understand their technical needs?

18 A So it's important so that when you go  
19 through the expense and effort of a data  
20 collection, that it actually solves the  
21 measurement objective that the subject matter  
22 experts have in mind.

1 Q How long do those meetings typically  
2 take?

3 A You know, they vary. Some requesting  
4 agencies have very well-defined requests and we  
5 understand it clearly and it could happen  
6 efficiently, and some requesting organizations are  
7 less organized. So, you know, it's context  
8 specific. 401/403

9 Q Can you give me a range?

10 A I mean, anywhere from, you know, one or  
11 two meetings to many months of negotiations.

12 Q Prior to the citizenship question, had  
13 you received requests for data from the  
14 Department of Justice specifically?

15 A Well, we do -- so I don't know if we  
16 received requests or not. I mean, we do produce  
17 Citizen Voting Age Population data from the ACS,  
18 and I know there had been conversations between  
19 Census and Justice regarding those data. So I  
20 would assume so, but I was not involved in any of  
21 those conversations or how that was initiated.

22 Q And those were prior to your becoming --

1 A Yes.

2 Q -- acting director?

3 A Yes.

4 Q Is it fair to say that part of the  
5 purpose for these technical meetings is to  
6 determine the fit between the data that the agency  
7 is requesting and the way in which the  
8 Census Bureau obtains that data?

9 MS. BAILEY: Objection. Vague.

10 THE WITNESS: So I'll answer what I think  
11 your question is

12 BY MS. GOLDSTEIN:

13 Q All right.

14 A The reason is there's a subject matter  
15 need for information, and the Census Bureau will  
16 try to understand what that need is and best  
17 design a data collection and processing  
18 methodology to meet the subject matter experts'  
19 requirement.

20 BY MS. GOLDSTEIN:

21 Q Has DOJ ever asked for a question to be  
22 added to the short form of the census prior and

1 persistent to the citizenship question? 401/403

2 MS. BAILEY: Objection.

3 THE WITNESS: Not that I know of.

4 BY MS. GOLDSTEIN:

5 Q Are you aware of any agency asking for a  
6 question to be added to the short form?

7 A Not to my knowledge, no.

8 Q Do agencies -- agencies typically request  
9 data, not questions, correct?

10 A No. That -- agencies often will request  
11 a question when they're really requesting data,  
12 because they don't know the difference.

13 Q And that's why you have those meetings,  
14 correct? 401/403

15 A Yes.

16 Q So turning back to Exhibit 4, did you get  
17 any more information from Barry about his efforts  
18 to reach out to Gary?

19 A I -- I don't think that we did. I mean,  
20 it was -- you know, this was coming up on the  
21 holidays. I'm getting -- communicating with folks  
22 was a little hit or miss. And so we certainly

1 didn't get anything that was substantive [sic]  
2 that I recall. But it was -- I think there was  
3 some -- some inefficiencies in the communication  
4 channel. So -- 401/403

5 Q Why do you say that?

6 A -- I -- it didn't seem like, you know,  
7 that he was making himself available to talk to  
8 Barry, so.

9 Q And when you say he, "he," you're  
10 refer- --

11 A Gary, yeah. 802

12 Q It's a rhyme. It's like a limerick.

13 A Yeah.

14 Q But at some point, looking at the top  
15 email here, Barry did speak to Mr. Gary, correct?

16 A Correct. Yes.

17 Q And do you know what they conversed  
18 about? 802

19 A I think they were trying to set up a  
20 meeting, and that didn't happen.

21 Q Okay. Did Barry -- did you learn  
22 anything else from Barry, other than what you told



1 folks from the White House about the citizenship  
2 question?

3 A No.

4 Q Prior to receiving the Gary letter, did  
5 you have communications with anyone associated  
6 with the White House about the citizenship  
7 question?

8 A No.

9 Q And after receiving the Gary letter, did  
10 you have communications with anyone affiliated  
11 with the White House about the citizenship  
12 question?

13 A No.

14 Q I'll take that.

15 MS. GOLDSTEIN: I apologize I do not have  
16 a lot of those exhibits.

17 (Plaintiffs' Exhibit 6, 2020 Census:  
18 Adding Content to the Questionnaire, was marked.)

19 BY MS. GOLDSTEIN:

20 Q I'm showing you what's been Bates stamped  
21 Plaintiffs' Exhibit 6. It is a two-page document  
22 marked 9865 and 9867 entitled 2020 Census: Adding

1 Content to the Questionnaire.

2 Do you recognize this document? Let's  
3 look at the first page first. 401/403

4 A You know, I recognize -- I mean, I'm not  
5 sure where this came from, but I think this looks  
6 like the process, yes.

7 Q When you say this looks like the process,  
8 what does that mean?

9 A The process for adding questions to  
10 the -- the ACS and decennial.

11 Q And the process for adding to the ACS and  
12 decennial is the same, correct?

13 A Yes. We call it the ACS, used to be the  
14 long form of the census.

15 Q And when we refer to the decennial or the  
16 census, we're referring to the short form?

17 A The short form.

18 Q So if you look at the very top, it says,  
19 "The Census Bureau follows a well-established  
20 process when adding questions to the decennial  
21 census."

22 A Uh-huh.

1 Q Do you agree with that statement?

2 A Uh-huh. Yes. 401/403

3 Q And it says that -- and is it part of  
4 that well-established process having those  
5 technical meetings that you just referred to?

6 A Yes. I mean, it's not laid out in here,  
7 but that is generally part of the process.

8 Q So looking at Step 1 --

9 A Uh-huh.

10 Q -- do you agree that typ- -- the  
11 typical -- well -- or I'm sorry. Withdrawn.

12 Do you agree the well-established process  
13 first provides that upon receiving requests,  
14 lawyers at the Department of Commerce work closely  
15 with OMB to determine whether data fulfill legal,  
16 regulatory or constitutional requirements?

17 A Yes.

18 Q And Step 2, do you agree that upon  
19 determining that a new question is warranted, that  
20 the Census Bureau must notify Congress of its  
21 intent to answer the question?

22 A Uh-huh.

1 Q I'm sorry. I need --

2 A Yes. Yes. 401/403

3 Q Thank you.

4 And how does the Census Bureau determine  
5 that a new question is warranted?

6 A So, again, that's -- you know,  
7 there's -- whether there's a legal or statutory,  
8 regulatory reason, and then whether it's feasible  
9 to ask that question.

10 Q What does that mean?

11 A That we can actually get valid responses  
12 from respondents.

13 Q How do you -- how does the Census Bureau  
14 determine that?

15 A Often through testing or what have you.  
16 So we do cognitive testing to see if people  
17 understand questions.

18 Q What other kinds of testing do you do?

19 A That's really the primary type of  
20 testing. You know, look at the quality of the  
21 data we get back from that, determine how best to  
22 word the question.

1 Q Other than testing wording, are there  
2 other things the Census Bureau looks at to  
3 determine whether or not a question is feasible?

4 A So not -- so they -- the -- you know, on  
5 the business side, we look to see whether the  
6 companies keep records of the thing that we're  
7 requesting. On the household side, that's usually  
8 less formal. So it's whether they understand the  
9 question and can answer it, so. 401/403

10 Q Are there other issues that go into  
11 whether or not a question will lead to a valid  
12 response from respondents?

13 A So, you know, there's testing. There's  
14 comparing it to other sources of information,  
15 trying to understand whether we're getting  
16 high-quality responses. That's not always  
17 possible.

18 Q What do you mean?

19 A Sometimes there's not another source of  
20 data.

21 Q Is there another source of data for the  
22 citizenship information?



1 Census and the subject matter experts at the  
2 agency --

3 A Correct.

4 Q -- correct?

5 A Correct.

401/403

6 Q So continuing on Step 2, this says,  
7 skipping down a line, "This is an intentionally  
8 [sic] process designed to give Congress the  
9 ability to review the topics and questions on the  
10 questionnaire before they're finalized?"

11 A Uh-huh.

12 Q Do you agree with that statement?

13 A Uh-huh. Yes. Sorry.

14 Q "If an additional topic is required, it  
15 is imperative that Congress be notified as soon as  
16 possible."

17 Do you agree?

18 MR. ROSENBERG: Excuse me. I think  
19 people that are dialed in can no longer hear the  
20 deposition.

21 MS. GOLDSTEIN: Can we go off the  
22 deposition for a minute?

1 VIDEOGRAPHER: The time is 9:46 a.m.

2 We're going off the record.

3 (Off the record.)

4 VIDEOGRAPHER: The time is 9:48 a.m. We  
5 are back on the record.

6 Please proceed, Counsel.

401/403

7 BY MS. GOLDSTEIN:

8 Q So we're still on 9865. And if we look  
9 to Step 3, "The Census Bureau must notify the  
10 public and invite comments regarding the change in  
11 the questionnaire with the Federal Register  
12 notice."

13 Is that correct?

14 A Yes.

15 Q And do you agree that that is also part  
16 of the well-established process?

17 A Yes.

18 Q And has this step of the process been  
19 followed for the citizenship question?

20 A It has not. This is in process. This  
21 part is to have the Paperwork Reduction Act  
22 package that goes to the Office of Management and



1 Budget, to Nancy Potok's office. I'm not sure  
2 where in the process, but the whole package for  
3 the census will be sent out. The citizenship  
4 question will be part of that package.

5 Q And Step 4, "The Census Bureau must test  
6 the wording of the new question."

7 A Right. 401/403

8 Q Do you agree that that is also part of  
9 the well-established process of adding content to  
10 the census questionnaire?

11 A Yes.

12 Q And the citizenship question has not been  
13 tested, correct?

14 A That's -- that's not correct.

15 Q Okay. The citizenship question has not  
16 been tested in the context of the decennial  
17 census, correct?

18 A That's correct.

19 Q The next sentence says, "It is too late  
20 to add a question to the 2018 end-to-end test, so  
21 additional testing on a smaller scale would need  
22 to be developed and implemented as soon as

1 possible."

2 Do you agree that this is part of the  
3 well-established process of adding content to the  
4 questionnaire?

5 A No. No. This is in addition.

6 Q Can you explain?

7 A I'm just saying it's too late to add  
8 something to 2018 end-to-end test, and if there  
9 was a new question, we would have to find another  
10 way to test it.

11 Q Do you know when 9865, Exhibit 6, was  
12 created?

13 A I'm not sure.

14 Q Do you know who created it?

15 A Census staff, I believe.

16 Q Do you know who on census staff?

17 A I'm not sure.

18 Q What is the 2018 end-to-end test?

19 A It's a test in three different sites  
20 that's just wrapping up right now in  
21 Providence, Rhode Island, where we did a full  
22 end-to-end test to make sure all the systems and

1 everything work so we are ready to go into the  
2 field in 2020.

3 Q And when you say a full end-to-end test,  
4 can you just tell me a little bit what that means?

5 A So it wasn't all of the operations, but  
6 most of the major operations that are involved in  
7 the 2020, from address canvassing, all the way  
8 through nonresponse follow-up and publishing the  
9 data will be our test.

10 Q And what's the purposes of the end-to-end  
11 testing?

12 A To work out any bugs or kinks, things  
13 that -- that we didn't foresee in sort of the  
14 smaller scale system specific testing that we do  
15 all the time.

16 Q And why is that important?

17 A So that we're prepared.

18 Q Was the citizenship question tested on  
19 the -- on any of the end-to-end testing --

20 A No. 401/403

21 Q -- for the 2020 census?

22 A It was not.

1 Q And did additional testing on a smaller  
2 scale get developed for the 20- -- for the  
3 citizenship question --

4 A No.

401/403

5 Q -- for the 2020 census?

6 A No.

7 Q And was additional testing on a smaller  
8 scale implemented for the citizenship question on  
9 the 2020 census?

10 A No.

11 Q Why not?

12 A The citizenship question that we'll be  
13 using on the 2020 census is the same question  
14 that's on the American Community Survey and has  
15 been answered by between 40 and 50 million  
16 households over many years. The question performs  
17 quite well, so we're confident that -- that it's  
18 fully tested.

19 Q Step 4 was not followed with respect to  
20 the citizenship question, correct?

21 A The Step 4 was obviated by the fact that  
22 the -- it has been on the ACS for many years. We

1 did not think that this step was necessary.

2 Q So Step 4 was not followed, correct?

3 A No.

4 Q I'm sorry? 401/403

5 A It was not.

6 Q Okay. Step 5 is, "The Census Bureau must  
7 make additional operational adjustments beyond  
8 testing to include new content. This includes  
9 redesigning the paper questionnaire and adjusting  
10 the paper data capture system."

11 Has that occurred for the citizenship  
12 question?

13 A I believe this is ongoing.

14 Q So it's in progress for the citizenship  
15 question?

16 A Yes.

17 Q "For Internet self-response, the  
18 additional question will require system  
19 redevelopment, once for English and then again for  
20 Spanish."

21 Has that occurred for the citizenship  
22 question?

1 Q Is it fair to say it's another -- another  
2 version of the process that's listed on 9865?

3 A Yes.

4 Q And do you agree that this is another  
5 version of the well-established process when  
6 adding questions to the decennial census?

7 A Sure. Yes.

8 Q Anything you disagree with in 9867?

9 MS. BAILEY: Objection. Vague.

10 THE WITNESS: No.

11 BY MS. GOLDSTEIN:

12 Q I'll take that back.

13 After you learned of the citizenship  
14 question, were you given any instructions  
15 about -- withdrawn.

16 After you learned about this citizenship  
17 question, a couple of weeks before receiving the  
18 Gary letter, were you given any instructions?

19 A No.

20 Q After receiving the Gary letter, were you  
21 given any instructions about next steps? 401/403

22 A I don't think we were given explicit

1 instructions. I think it was taken for granted  
2 that we were going to start this process. 401/403

3 Q The well-established process for adding a  
4 question to the census?

5 A Yes.

6 Q The first step of which is the technical  
7 meetings.

8 A Technical meetings.

9 Q Did you have any conversations about  
10 getting this process started after you received  
11 the letter?

12 A Well, I recall meeting with my staff and  
13 discussing, you know, how we were going to  
14 proceed, and we were trying to take as broad a  
15 view as possible. So I believe, you know, it was  
16 agreed that we would -- we would explore the use  
17 of administrative records to fulfill the request,  
18 as well. 401/403

19 Q And why was that an area that you were  
20 exploring?

21 MS. BAILEY: Objection. Vague.

22 THE WITNESS: Well, it's an area that we

1 always explore. So for -- you know, it's often  
2 easier, potentially more accurate to 401/403  
3 administrative records, but it's also the  
4 intention of Congress in Title 13, the census  
5 code, that when possible, we use administrative  
6 records in lieu of direct collection. So this is  
7 something that we typically -- typically do.

8 BY MS. GOLDSTEIN:

9 Q Did you receive any direction from  
10 Secretary Ross at this point?

11 A No.

12 Q Did you receive any directions from  
13 Karen Dunn Kelley at this point?

14 A No. Other than, you know, proceed  
15 with, you know, our analysis.

16 Q Any other instructions from Ms. Kelley?

17 A No.

18 Q Any directions from anyone else at  
19 Commerce at this time?

20 A No.

21 Q So let's talk a little bit more about  
22 what you did after you first received the Gary



1 letter. What exactly did you ask your staff to  
2 do? 401/403

3 A So we -- you know, we knew that the  
4 question was already on the ACS, so the testing  
5 thing was not a priority. You know, I think we  
6 all agreed that the question on the ACS performed  
7 as well as it could. The focus was primarily on  
8 seeing whether the administrative records assets  
9 that we have at the Census Bureau were useful in  
10 this regard to do a comparison of administrative  
11 records and -- and survey responses on the ACS and  
12 to come up with a -- with an analysis and  
13 suggestions as to what's the best way to proceed.

14 Q Did you have a timeline that you were  
15 working on?

16 A So we were on a tight timeline because,  
17 obviously, we needed to provide the questions to  
18 Congress by the end of March. So the Secretary  
19 needed to make a decision prior to that, so we  
20 were trying to work as quickly as we could.

21 Q And had anyone from Commerce given you  
22 any interim timelines before the point at which

1 you knew Congress had to get these questions?

2 A No. I don't think -- I think everybody  
3 knew the time was short. 401/403

4 Q Who did you speak to on staff at the  
5 outset?

6 A So I primarily worked through  
7 John Abowd -- who you spoke with last week, I  
8 believe -- who is the chief scientist and  
9 associate director for research and methodology,  
10 and he assembled the team that did the analysis.

11 Q So you said a moment ago that the  
12 citizenship question on the ACS performed as well  
13 as it could. What do you mean by that?

14 A I'm not really sure what I meant by that,  
15 but it performs well. So it -- relative to other  
16 questions on the form, it has about, you know, a  
17 middle range of allocation rates, and that  
18 means, you know, what we have to do for imputation  
19 and whatnot. You know, compared to a question  
20 like income, it's a much better performing  
21 question.

22 Q And what do you mean by better

1 performing?

2 A We have to impute much less than we do  
3 for other questions.

4 Q Is that related to the item nonresponse?

5 A Yes.

6 Q Can you explain?

7 A So item nonresponse is how many people  
8 fill out the survey that choose not to answer a  
9 particular question.

10 Q So when you say that the citizenship  
11 question on the ACS performs as well as it could,  
12 that is related to how many folks are answering  
13 that question on the ACS?

14 A Yeah.

15 Q I'm sorry?

16 A Yes.

17 Q Okay.

18 (Plaintiffs' Exhibit 7, Email, was  
19 marked.)

20 MS. GOLDSTEIN: Hold on one second,  
21 please.

22 BY MS. GOLDSTEIN:

1 Q So I'm showing you a document that's been  
2 marked as Plaintiffs' Exhibit 7. It is Bates  
3 number 3289.

4 COUNSEL: Can you repeat the Bates number  
5 again, please?

6 MS. GOLDSTEIN: 3289.

7 BY MS. GOLDSTEIN:

8 Q And it is a set of emails that were sent  
9 on December 22, 2017.

10 Do you recognize this email?

11 A Yes, I do.

401/403

12 Q What is this?

13 A In was an email from me to Art Gary with  
14 survey results of a preliminary analysis that our  
15 staff had put together very quick.

16 Q And why did you send this email?

17 A To try to motivate a meeting with  
18 Department of Justice technical experts.

19 Q So this response to Mr. Gary was sent  
20 about a week after the DOJ's request?

21 A Yep.

22 Q Is that a typical time frame for the

1 Census Bureau to respond to an agency's data  
2 response?

3 A It is when we have a tight deadline to  
4 get the questions to Congress. 401/403

5 Q Have you ever had such a tight deadline  
6 to get a -- the questions to Congress?

7 A So, I wouldn't know. I wasn't involved  
8 with prior decennials in this fashion. This is  
9 the only thing where we have to do this with, so.  
10 On the business side of the house, we have a  
11 luxury of not having to get Congress's permission  
12 on every change to a survey, so we didn't have  
13 this constraint.

14 Q So prior to your current role, you  
15 weren't involved in the question-making process  
16 for the census?

17 A For the decennial, no.

18 Q Okay. And the to line here is entirely  
19 redacted, but this email was sent to Art Gary,  
20 correct?

21 A Yes. I believe so.

22 Q And so this email says that you directed

1 staff to review all possible ways to address the  
2 needs expressed in the letter.

3 A Uh-huh.

4 Q I need yes or no.

401/403

5 A Yes.

6 Q That's the Gary letter, correct?

7 A Yes.

8 Q And your staff found that, "The best way  
9 to provide PL94 block-level data with citizen  
10 voting population by race and ethnicity would be  
11 used by outlining a linked file of administrative  
12 and survey data the Census Bureau already  
13 possessed."

401/403/802

14 Correct?

15 A Correct.

16 Q That is what your staff found?

17 A Yes.

18 Q And did you agree with that conclusion?

19 A I did.

20 Q And the next line says, "This would  
21 result in higher-quality data produced at a lower  
22 cost."

1 Do you agree with that conclusion?

2 A Yes.

3 Q And then you write that -- you suggest we  
4 schedule a meeting of Census and DOJ technical  
5 experts to discuss the details of this proposal,  
6 correct?

7 A Uh-huh. Yes.

401/403/802

8 Q And that's the technical meeting that we  
9 spoke about earlier, correct?

10 A Yes.

11 Q To your knowledge, had DOJ ever requested  
12 PL94 block-level data with citizen voting age  
13 population by race and ethnicity before?

14 A Not that I know of.

15 Q Did you communicate your conclusion in  
16 this email that you should use a linked file,  
17 administrative and survey data to the  
18 Department of Commerce prior to sending this email  
19 to DOJ?

20 A No. I don't believe I did, but I think I  
21 forwarded this email to Karen Dunn Kelley shortly  
22 afterwards, so.

1 Q When you sent this email to Mr. Gary, did  
2 Karen Dunn Kelley know that the Census Bureau had  
3 concluded that using this linked file of  
4 administrative records and survey data was the  
5 Census Bureau's preferred approach? 401/403

6 A So I don't think it's fair to say at this  
7 time that it was a conclusion necessarily.

8 Q Sure.

9 A I mean, this was sort of a preliminary  
10 finding, and we wanted to get together with folks  
11 at DOJ to discuss that, so.

12 Q Absolutely. So was Ms. Dunn Kelley aware  
13 of that preliminary finding?

14 A I don't recall discussing it with her  
15 before I forwarded this to -- to her, but she knew  
16 that we were trying to work with the folks from  
17 DOJ. So -- but I don't recall -- I mean, she knew  
18 we were also looking into administrative records.  
19 So I mean --

20 Q How did she know that? 401/403

21 A I think we said that we were.

22 Q When?



1           A   Probably shortly after getting the  
2   letter, that we were going to review our options  
3   and see what we could do.

4           Q   And do you recall how she responded to  
5   that?

401/403

6           A   I -- I don't actually, no, so.

7           Q   Do you remember any other communications  
8   between yourself and the folks at Commerce about  
9   the citizenship question in the time period  
10   between receiving the Gary letter and sending this  
11   email?

12          A   You know, other than we were getting to  
13   work and, you know -- the time frame was short and  
14   the people saying the time frame was short was  
15   primarily us, because I think we knew we needed to  
16   get the questions to Congress by the end of March,  
17   so.

18          Q   Any instructions from Commerce?

19          A   No.

20          Q   Typically, when an agency requests for  
21   data -- I'm sorry. Withdrawn.

22               Typically, when an agency requests data,

1 knowledge of what the sign off typically is, but  
2 we probably would not add questions to the ACS  
3 without Commerce knowing that we were doing so.

4 Q Do you know if the Secretary --

5 A So -- so I will add that there's -- you  
6 know, when PRA packages do go to OMB, they do get  
7 routed through Congress.

8 Q Do you know who they get routed through?

9 A Through the economic and statistics  
10 administration. So Karen Dunn Kelley's, you know,  
11 current role as Under Secretary, through that  
12 office.

13 Q Okay. Do you know if the Secretary  
14 typically reviews requests to add questions to the  
15 ACS? 401/403/602

16 A I'm not sure. I don't think that the  
17 Secretary usually gets involved in ACS questions.

18 Q Do you know if the Secretary --

19 A But I -- I'm not sure about that.

20 COUNSEL: Excuse me. Sorry. I got an  
21 email that apparently the folks on the phone can't  
22 hear again.

1 MS. GOLDSTEIN: Off the record, please.

2 VIDEOGRAPHER: The time is 10:11 a.m. We  
3 are going off the record.

4 (Off the record.)

5 THE VIDEOGRAPHER: Time is 10:13 a.m.  
6 We're back on the record.

7 Please proceed.

8 BY MS. GOLDSTEIN:

9 Q Do you know if the Secretary is typically  
10 involved in approving changes to the decennial  
11 census?

12 A So there hasn't been any changes to the  
13 long form -- or short form for some time, so I  
14 can't tell you what the typical practice is,  
15 because it hasn't been exercised. But a change to  
16 the short form census would get a lot of  
17 visibility at the Department and the  
18 Secretary -- it would seem reasonable that the  
19 Secretary would do that in a typical course if  
20 there was a typical course.

21 Q The Census Bureau considered changes to  
22 the decennial census for this year, correct, apart

1 from the citizenship question?

2 A Yes.

401/403

3 Q Changes to the race and ethnicity  
4 question?

5 A Changes to the race and ethnicity  
6 question, yes.

7 Q Any other changes?

8 A No.

9 Q And did the Secretary weigh in on those  
10 proposed changes to the race and ethnicity  
11 question?

12 A Not that I'm aware of. He was briefed on  
13 them, but I don't think he weighed in, one way or  
14 the other.

15 Q And did other folks at Commerce weigh in  
16 on the proposed changes to the race and ethnicity  
17 question?

18 A No.

19 Q Is it fair to say that the  
20 Commerce Department accepted the Census Bureau's  
21 recommendations with respect to the race and  
22 ethnicity question on the short form?

1           A    Yes.   There was a PRA package requesting  
2   that change that went to OMB.                   401/403

3           Q    So turning back to this exhibit,  
4   Exhibit 7, what happened after you sent this email  
5   to Mr. Gary?

6           A    I'm not sure if he responded immediately,  
7   but he eventually responded that DOJ did not need  
8   to meet.

9           Q    Did you get any directions from  
10   Karen Dunn Kelley after you forwarded this email  
11   on to her?

12          A    Directions of what sort?

13          Q    Any instructions about how to proceed.

14          A    No.   She knew that we were trying to set  
15   up a meeting.

16          Q    Did you have any substantive  
17   conversations with Ms. Kelley about trying to set  
18   up this meeting?

19          A    Other than we're trying to set up the  
20   meeting, I don't think so, no.

21          Q    Did you have any substantive  
22   questions -- or discussions with anyone else at

1 data request?

2 A So, yes, probably.

3 Q Do you think you would remember if  
4 Department of Commerce told Census not to meet on  
5 the citizenship question?

6 MS. BAILEY: Objection. Calls for  
7 speculation.

8 THE WITNESS: So -- well, they didn't  
9 tell us no, so.

10 BY MS. GOLDSTEIN:

11 Q So no one at Commerce told you not to  
12 meet with the Department of Justice technical  
13 team, correct?

14 MS. BAILEY: Objection. Asked and  
15 answered.

16 BY MS. GOLDSTEIN:

17 Q Correct?

18 A No.

19 Q Okay. This email says, "Technical  
20 meetings will follow."

21 Does that refer to the technical meetings  
22 we've discussed?

1 A Yes.

2 Q And then it says, "We do not have a green  
3 light to approach outside experts or DOJ at this  
4 time."

5 What does that mean?

401/403

6 A That's the technical team reaching out  
7 directly.

8 Q You were reaching out directly in --

9 A Yes. I was reaching out directly.

10 Q Now, this reference to outside experts,  
11 what role do outside experts typically play in  
12 this process?

13 A So outside experts here could mean  
14 several things, but I think that this probably  
15 means folks that we would request peer review or  
16 something from to see if the methods that we were  
17 suggesting were appropriate. And that the  
18 methods, I think, that they're probably referring  
19 to is some sort of modeled approach using ACS and  
20 administrative data. So you would want other  
21 statisticians to weigh in on the appropriateness  
22 of that approach.

1 Q Is that a typical part of the process in  
2 meeting an agency's data needs?

3 A Often it is, yes. 401/403

4 Q Did that occur --

5 A Especially in a more -- but that's a  
6 relatively more complicated way of approaching the  
7 problem than strict survey methodology. But -- so  
8 we have a scientific advisory committee. We have  
9 regular contacts with other folks in the  
10 scientific community. Census Bureau tries to be  
11 as transparent in its methods as possible and  
12 have -- to the best as we can have some buy-in  
13 from the scientific community that we're doing  
14 things appropriate.

15 Q And did that happen with the citizenship  
16 question?

17 A Well, the citizenship question on the  
18 ACS, yes. In this case, you know, we did not have  
19 those discussions yet, so --

20 Q In this case, meaning the citizenship  
21 question --

22 A For --



1 Q -- on the decennial?

2 A -- at -- during this time frame.

3 Q After 12/19/2017, were outside experts  
4 approached about the citizenship question?

5 A No. The Census Scientific Advisory  
6 Committee did opine on it at a meeting, and now  
7 that we have a decision from the Secretary and the  
8 team -- the similar team is working on what the  
9 methodology of using the -- the combined census  
10 question and the administrative records that will  
11 be peer reviewed, both by the scientific advisory  
12 committee and others.

401/403/802

13 Q When you say that the Census Scientific  
14 Advisory Committee opined, what do you mean?

15 A So they -- they had -- during the opening  
16 of the meeting, they had some comments on the  
17 question, so --

18 Q Were those comments so listed  
19 by -- Census Bureau?

20 A I don't believe it was -- they were  
21 solicited, because the meeting was right after  
22 the decision, so the agenda had already been sent

1 prior to that.

2 Q And what did that advisory committee  
3 opine?

4 A That they were not in support of adding  
5 the question to the census. 401/403/802

6 Q What reasons did they give?

7 A The primary technical reason that they  
8 gave is that it wasn't tested, which we argued  
9 back against, but that was the primary technical  
10 reason.

11 Q Were there other reasons?

12 A I think they thought it would be  
13 disruptive to the -- to the decennial.

14 Q Do you agree?

15 A It can be disruptive, yes.

16 Q Why do you say that?

17 A We're here in a -- having a deposition.  
18 I think that's clear why it's disruptive.

19 So there are parts of society that would  
20 not like to have the question. There are parts of  
21 society that would like to have the question.

22 Q Any other reasons why the citizenship

1 question could be disruptive to the process?

2 A Just -- if there's controversy  
3 surrounding the census, which there always is any  
4 way, it makes conducting a full census more  
5 difficult.

401/403

6 Q What do you mean by a full census?

7 A Complete, accurate census.

8 Q What's a complete census?

9 A That we count everybody once in the right  
10 place.

11 Q Did you have any discussions with  
12 Earl Comstock about setting up a technical  
13 meeting --

14 A No.

15 Q -- with DOJ?

16 A No.

17 Q And did you -- you didn't have any  
18 conversations with anyone at Commerce about  
19 setting up a technical meeting with DOJ, other  
20 than Karen Dunn Kelley, correct?

21 A No. We have lots of -- we have regular  
22 meetings where there's many people in the room.

1 So Earl may have been in the room, but I did not  
2 have a conversation with Earl about this.

3 Q What happened after this email was sent?

4 MS. BAILEY: Objection. Vague.

5 THE WITNESS: After this email?

6 BY MS. GOLDSTEIN:

7 Q Yes. Did you receive a response from  
8 DOJ?

9 A I already sort of hinted at that  
10 eventually I got a response that they didn't need  
11 to meet, but I don't think that came at this time.

12 Q Do you remember how you first received a  
13 response from DOJ? Was it a phone call? Was it  
14 an email?

401/403/802

15 A So there was a couple emails back and  
16 forth with Art Gary and I about trying to set a  
17 meeting up and that he was working on that.

18 Q And then what happened?

19 A And then, eventually, I got a reply back  
20 that they did not want to meet.

21 Q Did you get a -- was that in a phone call  
22 or was that an email?

1 meeting was cancelled.

2 Q Do you remember if this cancelation came  
3 as a surprise to you?

4 A Well, meetings get cancelled all the  
5 time, so probably not.

6 Q Do you know if you had any -- did you  
7 have any conversations with Mr. Gary about this  
8 cancellation?

9 A No.

10 Q What did you do after you received this  
11 email?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: I assume I probably tried  
14 to reach out to see if we could get it  
15 rescheduled, but I don't know if I did that for  
16 sure.

17 BY MS. GOLDSTEIN:

18 Q After Mr. Gary cancelled the meeting on  
19 January 16th, do you -- did you reach out to him  
20 again?

21 A I'm -- I'm not sure that I did, but I  
22 imagine that I probably would have tried.

1 Q Anything that would help you remember?

2 A Well, at some point, he sent me an email

3 saying that they were not going to meet.

4 So whether that was prompted by me or not, I don't

5 know.

6 Q Do you recall any phone calls with him at

7 this time?

8 A No.

9 Q Were you ever given a reason why DOJ was

10 cancelling this meeting? 401/403

11 A As I recall from the email that he

12 sent -- that I imagine you have in your packet

13 there -- that DOJ believed that their technical

14 specifications were completely laid out in

15 their -- in the December letter.

16 Q Do you agree with that?

17 A I probably don't agree with that because

18 I think we wanted to understand how they used the

19 data, so -- so we would have liked an

20 additional -- additional meeting with them.

21 Q Let's go to that one. Can I have that

22 back, please?

1 as surprised. You know, it was what it was.

2 Q What does that mean?

3 A It's business. They didn't want to meet,  
4 so.

5 Q Other than these communications with  
6 Mr. Gary that you've described so far, did you  
7 have any communications with anyone at the  
8 Department of Justice about the citizenship  
9 question?

401/403

10 A No.

11 Q To your knowledge, did the Census Bureau  
12 have any communications with the  
13 Department of Justice about the citizenship  
14 question?

15 A No.

16 Q After you spoke with Art Gary and he  
17 indicated that DOJ did not want to meet with the  
18 Census Bureau, did you speak to anyone at Commerce  
19 about that refusal?

20 A This is an email to Karen Dunn Kelley, so  
21 yes.

22 Q And did you speak to her about this

1 following this email?

2 A I mentioned that we probably discussed it  
3 at some point, but I think this was the gist of  
4 that conversation.

5 Q Did Ms. Dunn Kelley have any response to  
6 the DOJ's refusal to meet?

7 A I don't recall.

8 Q Is there anything that would help you  
9 recall?

10 A Whether she had a response? I doubt it.  
11 I don't -- so.

12 Q Did you ask anyone in Commerce to help  
13 you set up a meeting with DOJ?

14 A We'd already had Barry Robinson try to do  
15 that, so I think this is where we left it, or this  
16 is where we left it.

17 Q I'll take that, please.

18 Do you believe that the letter requesting  
19 citizenship be added to the 2020 census from DOJ,  
20 the Gary letter, fully describes the DOJ request?

21 MS. BAILEY: Objection. Vague.

22 THE WITNESS: It does spell out the need



1 to have citizenship status added to the -- the  
2 PL94 level data. To that extent that it requires  
3 block level data, it is a pretty well-formulated  
4 request, so.

5 BY MS. GOLDSTEIN:

6 Q Does the Gary letter answer all of the  
7 Census Bureau's technical questions about the Gary  
8 letter's request?

9 MS. BAILEY: Objection. Form.

10 THE WITNESS: Yeah. We would have had  
11 additional questions.

12 BY MS. GOLDSTEIN: 401/403

13 Q What kind of questions would you have  
14 had?

15 A Questions that would have helped us  
16 strategize how we would perform disclosure  
17 avoidance on these files. You know, so that's  
18 another technical matter how we -- you know, by  
19 law, we can't disclose the identity of any  
20 particular individuals, so there's a process  
21 afterwards that we -- that we -- you know, sum of  
22 the data, perhaps add some noise. Understanding

1 how the data are used to help us do that in a way

2 that optimizes the data for their intended use.

3 Q What else would have been discussed at

4 the technical meeting between DOJ and the

5 Census Bureau?

6 A So there might have been discussions

7 about, you know, various cross tabulations of the

8 data, what characteristics were the most important

9 for their purposes.

401/403

10 Q And does that go to the fit between the

11 method proposed and the data used?

12 A And what they're using.

13 Q What else?

14 A That's about it.

15 Q And so is it fair to say that the

16 Census Bureau has never had conversations with the

17 Department of Justice about that fit question?

18 A That's correct.

19 (Plaintiffs' Exhibit 14, Email, was  
20 marked.)

21 BY MS. GOLDSTEIN:

22 Q I'm showing you what's been marked as

1 Plaintiffs' Exhibit 14. It is a document Bates  
2 stamped 9008 to 9012. I would ask that you focus  
3 on the first page.

4 A Uh-huh.

5 Q Do you recognize the email here at the  
6 top?

7 A Yes.

8 Q What is this?

9 A An email from John to the technical team  
10 and others about how things were progressing.

11 Q So John reports that you report that you  
12 had discussed this with the Under Secretary,  
13 correct?

14 A Uh-huh. Uh-huh. Yes.

15 Q And the Under Secretary, that's  
16 Karen Dunn Kelley, correct?

17 A Yes.

18 Q Agrees with the recommendation of  
19 Alternative C but Alternative A remains a  
20 possibility, as well, correct?

21 A Yes.

22 Q Can you explain to me what this all

1 means?

2 A So, you know, this is where I have to  
3 admit I have a vague recollection of this -- this  
4 stage of the process, but I think this was we had  
5 discussed -- I had discussed with Karen that the  
6 preliminary findings, which we -- you had earlier,  
7 and she was supportive of Alternative C and A, but  
8 I don't recall a detailed conversation about that  
9 with her.

401/403/802

10 Q What was recommended -- what was  
11 Alternative C?

12 A That was administrative records.

13 Q And what was Alternative A?

14 A Using the ACS combined -- or  
15 Alternative A was to do nothing but add some  
16 additional modeling, use -- use the ACS data.

17 Q The status quo?

18 A Yeah, essentially.

19 Q When did you discuss the Census Bureau's  
20 recommendation with -- first discuss them with  
21 Karen Dunn Kelley?

22 A I think -- well, shortly after getting

1 the stuff from John, I think we -- I forwarded  
2 that information to her, so.

3 Q Can you describe your conversations with  
4 Ms. Karen Dunn Kelley? 401/403

5 A I'm not sure there was a conversation,  
6 so.

7 Q So how do you know --

8 A So --

9 Q -- Ms. Karen Dunn Kelley?

10 A Again, I don't recall this conversation  
11 directly.

12 Q Do you recall that Ms. Dunn Kelley agreed  
13 with the recommendation of Alternative C?

14 A I don't recall her saying that.

15 Q Do you know why you put this in --

16 A I didn't put this in --

17 Q -- by you -- I'm sorry. Can I -- let me  
18 try again.

19 Do you recall telling John that  
20 Karen Dunn Kelley agrees with the recommendation  
21 of Alternative C?

22 A I don't recall telling John this. This

1 is -- so -- just so you know, this is, you know,  
2 January 4th. There was professional meetings  
3 about to happen. I was probably involved in  
4 several different things at the time. I don't  
5 recall this conversation. 401/403

6 Q Do you remember, separate from the email,  
7 what Ms. Dunn Kelley's view was with respect to  
8 which alternative was preferable, A, B, C, around  
9 the beginning of January 2018?

10 A So I don't recall a view so much as I  
11 think she was supportive of the process that the  
12 Census Bureau was following, and that, you know,  
13 she was looking for -- to see what -- where that  
14 came out. So I don't -- I don't recall her  
15 stating a preference on one alternative or the  
16 other. 802

17 Q Do you recall --

18 A Perhaps she did. I'm just saying I don't  
19 recall.

20 Q Do you recall Ms. Dunn Kelley disagreeing  
21 with any of the recommendations of the  
22 Census Bureau around this time with respect to

1 this question?

2 A Yeah. I don't recall her agreeing or  
3 disagreeing. 401/403/802

4 Q Now, this email was sent back in early  
5 January of 2018. And you were cc'd on this email,  
6 correct?

7 A Yes.

8 Q Do you recall writing back to Mr. -- to  
9 Dr. Abowd saying, no, this is not what I discussed  
10 with the Under Secretary?

11 A No. I don't -- I don't recall doing  
12 that.

13 Q Did you do that?

14 A I said, no, I do not recall doing that.

15 Q And did you write back to Dr. Abowd and  
16 say Karen Dunn Kelley does not agree with the  
17 recommendation of Alternative C?

18 A I don't think I did that, no. 401/403

19 Q Okay. So is it fair to say that you  
20 received this email back on January 4, 2018, yes?

21 A Yes.

22 Q And that you agreed with this email when

1 you received it?

2 MS. BAILEY: Objection. Form.

3 THE WITNESS: So I get lots of emails  
4 that I pay some attention to or less attention to.  
5 So as you might imagine, I get cc'd on lots of  
6 email. So -- so saying that I agreed with it,  
7 is -- is saying that I read it and fully  
8 internalized it when I was busy with other  
9 activities, as well. So I don't recall doing  
10 that.

401/403

11 BY MS. GOLDSTEIN:

12 Q If you received an  
13 email -- Ms. Dunn Kelley is your boss; is that  
14 correct?

15 A That's correct.

16 Q If you received an email that  
17 mischaracterized a conversation that you had with  
18 your boss, would you have corrected that  
19 mischaracterization?

20 A If I'd read the email, yeah.

21 Q Are you in the habit of not reading  
22 emails that you receive?



1 A There are many emails that I do not read.

2 Q Have you read this email before?

3 A So I do not recall getting this email on  
4 January 4th -- or -- yeah, January 4th.

5 Q Is it fair -- 401/403

6 A Or that -- or in more particular, the  
7 conversation that I would -- I supposedly had with  
8 the Secretary -- Under Secretary.

9 Q Is it fair to say that if you had  
10 received this email, read it, and disagreed with  
11 the characterization, you would have said  
12 something about it?

13 MS. BAILEY: Objection. Asked and  
14 answered.

15 THE WITNESS: Yes. Probably.

16 BY MS. GOLDSTEIN:

17 Q Do you know what memo was attached to  
18 this email?

19 A No.

20 Q I'm going to show you what's been marked  
21 as Exhibit 6 to the Abowd deposition -- previously  
22 marked as Exhibit 6 to the Abowd deposition. It

1 is a January 19, 2018 memorandum entitled  
2 technical review of the Department of Justice  
3 request to add the citizenship question to the  
4 2020 census.

5 Do you recognize this document?

6 A I do.

7 Q What is this?

8 A This is the memo that we prepared for the  
9 Secretary.

10 Q We previously looked at a white paper  
11 from the Census Bureau, correct?

12 A Uh-huh. Yes.

13 Q Why was there -- was this nec- -- this  
14 memo necessary, given the prior white paper?

15 A I think it was just a more formal  
16 representation.

17 Q Did you have any input into this  
18 document?

19 A Not on a technical level, no.

20 Q Who do you rely on for the technical  
21 component?

22 A John and his team.

1 Q And when we're talking about the  
2 technical component, we're talking about the  
3 science of --

4 A Right. Yes.

5 Q So you rely on John Abowd and his team  
6 for the science with respect to the citizenship  
7 question?

8 A Yes. In this case, yeah. I don't have  
9 time to do science anymore.

10 Q And did you review the findings of this  
11 memo?

12 A Yes. 401/403

13 Q And did you agree with the findings of  
14 this memo?

15 A I did.

16 Q And when this memo says -- I'm looking  
17 here at the last paragraph on Page 1277.

18 A Correct.

19 Q "Alternative C best meets DOJ's stated  
20 uses, is comparatively far less costly than  
21 Alternative B, does not increase response burden,  
22 and does not harm the quality of the census

1 count."

2 You agree with that statement?

3 A I did.

401/403

4 Q And when you look at the last sentence of  
5 that paragraph, "However, Alternative B is very  
6 costly, harms the quality of the census count, and  
7 would use substantially less accurate citizenship  
8 status data that are available from administrative  
9 sources," you agree with that statement, correct?

10 A Yes.

11 Q Who -- do you know if Karen Dunn Kelley  
12 reviewed this memo?

13 A She did.

14 Q How do you know that?

15 A Because we gave it to her.

16 Q Did you speak with her in person about  
17 this memo?

18 A Yeah. We -- we met about this memo.

19 Q When?

20 A I'm not sure exactly the date, but I  
21 believe shortly after we sent it down. It was  
22 either late January or early February.

1           A    I don't recall.  Probably not much more  
2   than an hour.

3           Q    What happened at this meeting?

4           A    We had a discussion of the -- of the  
5   recommendations.

6           Q    Who is we?

7           A    The people I just mentioned at the  
8   meeting.

9           Q    Who led the meeting?

10          A    I think the meeting was led -- so the  
11   Secretary typically reads these things.  So to say  
12   that these meeting are led, it's kind of you come  
13   in the room and you are talking about it.  He'll  
14   ask questions, so.

15          Q    And did the Secretary ask questions?

16          A    He did.

17          Q    What did the Secretary ask?

18          A    He was -- he quickly honed in on that  
19   none of the three options were perfect.

20          Q    What do you mean?

21          A    So -- so each one has respective  
22   strengths and weaknesses.  In particular, when we

1 started focusing between Options B and Options C,  
2 you know, we don't have administrative records for  
3 every person in the country, so we would miss  
4 folks that we would have to impute citizenship  
5 status for. Obviously, Option B had cost  
6 ramifications and also would miss some people.  
7 And so that's when the discussion sort of turned  
8 to a sort of hybrid model.

9 Q Tell me what else was discussed at this  
10 meeting.

11 A That was essentially what was discussed.

12 Q What was the discussion of this hybrid  
13 model?

14 A So could we use both sources of data to  
15 produce sort of the block-level estimates  
16 that -- that DOJ needed?

17 Q And who asked for the hybrid model?

18 A So the Secretary asked for the hybrid  
19 model.

401/403/802

20 Q What else did the Secretary say at this  
21 meeting?

22 A That's about it.

1 Q Can you describe a bit more specifically  
2 what the Census Bureau was asked to do coming out  
3 of that meeting? 401/403/802

4 A To explore a fourth option, a hybrid  
5 option that included a question on the short-form  
6 census and administrative records.

7 Q Any other details that the Census Bureau  
8 was given?

9 A No.

10 Q Any timeline the Census Bureau was given?

11 A So, obviously, the timeline was very  
12 compressed, so we still needed to get the  
13 questions to Congress by March, so.

14 Q Were you given any more specifics about  
15 your time frame?

16 A No.

17 Q Do you recall anything that --

18 A As soon as possible, I think, is the time  
19 frame that we're dealing with here.

20 Q Do you recall anything that Mr. Comstock  
21 said in that meeting? 401/403/802

22 A So he asked similar questions to the

1 Secretary and about the -- about the ability of us  
2 to do sort of a hybrid approach. I think, you  
3 know, the -- the missing -- the miss- -- the  
4 people missing from the different options was  
5 something that they were -- seemed particularly  
6 concerned about. I think they wanted to avoid  
7 imputing as many people as they could.

8 Q Do you know why? 401/403/802

9 A I -- for data quality reasons, to have a  
10 direct measurement.

11 Q Do you remember anything else that  
12 Mr. Comstock said at this meeting?

13 A No.

14 Q Do you remember anything that  
15 Ms. Dunn Kelley said at this meeting?

16 A No.

17 Q Do you remember anything that Mr. Lamas  
18 said at this meeting?

19 A No, I don't.

20 Q Anything else you remember about this  
21 meeting?

22 A No.



1 Q What is this?

2 A I think it was a summary of the white  
3 paper findings.

4 Q And this is a document that's  
5 Bates-stamped 8614 to 8616. It is a memorandum  
6 addressed to you entitled summary of  
7 costs -- quality/cost of alternatives for meeting  
8 Department of Justice's request for citizenship  
9 data.

401/403

10 A Yep.

11 Q If you turn to the last page of this  
12 document, it states that "Alternative C even  
13 better meets DOJ's stated uses."

14 Do you agree with that?

15 A I do.

16 Q "Is comparatively far less costly than  
17 Alternative B."

18 Do you agree with that?

19 A Yes.

20 Q "And does not harm the quality of the  
21 census count."

22 Do you agree?

1	A	Yes.
---	---	------

2 Q "For these reasons, we recommend

3 Alternative C for meeting 401/403

4 the Department of Justice data request."

5 Who is we?

6 A The technical team.

7 Q And you agree with that, as well?

8	A	Yes.
---	---	------

9 Q I'll take that back.

10 Other than the meeting you just described  
11 regarding the citizenship question with  
12 Secretary Ross, did you have any other questions  
13 for Secretary Ross about the citizenship question?

14           A     Did I have any extra questions for the  
15     Secretary?

16 Q Any other discussions with Secretary Ross  
17 about the citizenship question?

18           A     Nothing that I recall as being important,  
19     that's for sure.  So probably not, no.

20 Q Do you recall anything that was  
21 unimportant?

22	A	No.
----	---	-----

1 scroll towards the back of it, it begins  
2 on -- sorry -- the first page of the document you  
3 have is what number, Dr. Jarmin?

4 A 1286. The first page?

5 Q Oh. I'm sorry. Can I have that back?

6 MS. GOLDSTEIN: Actually, can I have one  
7 of those, please? Let's do it this way, can you  
8 just mark that?

9 (Plaintiffs' Exhibit 16, Email, was  
10 marked.)

11 BY MS. GOLDSTEIN:

12 Q I'm showing you what's been marked as 16,  
13 Exhibit 16 to your deposition, and it begins 9812.  
14 It goes to 9833.

15 Can you please turn to 9822? Do you  
16 recognize this document?

17 A Yeah. This is responses to Commerce's  
18 questions about the memo to the Secretary.

19 Q How did this document come about?

20 A We received these questions, and these  
21 are the responses to them.

401/403

22 Q Who did you receive these questions from?

1           A    I'm not sure.   I think it might have been  
2   Earl Comstock.

401/403

3           Q    Anyone else?

4           A    These things are often cc'd across a  
5   number of people, so.

6           Q    And when did you receive these questions?  
7   Do you recall?

8           A    I believe it was shortly after meeting  
9   with the Secretary, but I'm not sure.

10          Q    Who wrote the answers to these questions?

11          A    Folks on the technical team, for the most  
12   part.

13          Q    From the Census Bureau?

14          A    Yeah.

15          Q    And when you say for the most part, what  
16   do you mean?

17          A    Well, that's my understanding of who  
18   answered these questions.

19          Q    It was all folks from the technical  
20   team --

21          A    Yeah.

22          Q    -- correct?   Yes?

1           A    Yes.

2           Q    And did you have a role in developing the  
3    answers to these questions?

4           A    Not a -- I mean, I was cc'd on things,  
5    but I was not -- I did not play a role in  
6    addressing the questions directly.

7           Q    Did you review the answers that the  
8    Census Bureau came up with?           401/403

9           A    Yeah.   I probably looked at some of this.  
10   Probably -- not all of this, because this came in  
11   drips and drabs, so.

12          Q    How was this document transmitted to  
13   Commerce?

14          A    I believe it was sent probably by Abowd  
15   or someone like that, or maybe by -- I mean, it  
16   might have been sent by me forwarding on what the  
17   team had done.

18          Q    Do you --

19          A    Someone would have forwarded down to  
20   them.

21          Q    Is it fair to say you I agreed with what  
22   the technical team wrote in this document?

1 you.

2 Q Did the Census Bureau receive any  
3 feedback on these questions from Commerce?

4 A Other than the like, you know,  
5 clarifications or anything like that, no. No.

6 Q So it's my understanding that Dr. Abowd  
7 testified this was the final Census Bureau version  
8 of these questions and answers. Can you tell if  
9 that's accurate? 401/403

10 A As far as I -- I've never seen another  
11 set of them go out, so.

12 Q What do you mean?

13 A I mean, I never saw anything after this,  
14 so.

15 Q So, to your knowledge, this is --

16 A This is the final, yeah.

17 Q And if you go to 9832, Question 31 --

18 A Uh-huh.

19 Q -- it states, "The Census Bureau follows  
20 a well-established process when adding or changing  
21 content on the census for ACS to ensure the data  
22 fulfill legal and regulatory requirements

1 established by Congress."

2 Do you agree with that?

3 A Yep. 402/403

4 Q "Adding a question or making a change to  
5 the decennial census or the ACS involves extensive  
6 testing, review and evaluation."

7 Do you agree?

8 A Uh-huh.

9 Q I'm sorry. I need a yes or --

10 A Yes.

11 Q "This process ensures the changes  
12 necessary and will produce quality, useful  
13 information for the nation."

14 Do you agree?

15 A We've already gone over that, yes.

16 Q And when you look down at the steps here  
17 that are listed in Question 31, do you agree that  
18 each of these steps represents part of the  
19 well-established process when adding or changing  
20 content on the census?

21 A Yes. 401/403

22 Q "Including that final proposed questions

1 result from extensive cognitive and field testing

2 to ensure their result and proper data"?

3 A Yes.

4 Q "With an integrity that meets the

5 Census Bureau's highest standards"?

6 A Correct.

401/403

7 Q What's the difference between cognitive

8 and field testing?

9 A So cognitive is making sure people

10 understand the question. Field testing is making

11 sure that we can actually implement the question

12 in the field.

13 Q What does that mean?

14 A So does it work in a -- in -- on a

15 survey.

16 Q How -- how do you tell if it works on a

17 survey?

18 A Well, whether we get good response or

19 not.

20 Q How do you test that?

21 A So by doing a test survey or in another

22 survey.



1 Q Can you help me understand the difference  
2 between cognitive and field testing?

3 MS. BAILEY: Objection. Asked and  
4 answered.

5 THE WITNESS: So cognitive is when I  
6 understand whether you can read and understand the  
7 question and what is being asked of you, so.

8 BY MS. GOLDSTEIN:

9 Q And field testing is about how a question  
10 performs on a survey instrument?

11 A Right. People may understand it and  
12 still choose not to answer it.

13 Q And that's --

14 A Or answer it incompletely or something,  
15 right.

16 Q And is that the sort of thing you find  
17 out from field testing?

18 A Yes.

19 Q Was the citizenship question field  
20 tested?

21 A Of course. It's been in the ACS for  
22 years. So it's been answered by 40 to 50 million

1 households.

2 Q So it was field tested in the context of  
3 the ACS, yes?

4 A Yes.

5 Q Was the citizenship question ever field  
6 tested in the context of the short form?

7 MS. BAILEY: Objection. Asked and  
8 answered.

9 THE WITNESS: We never asked it on the  
10 short form before. The only way to do that would  
11 be to ask it on the short form.

12 BY MS. GOLDSTEIN:

13 Q Couldn't you have put it on the  
14 end-to-end test?

15 A The end-to-end test goes to fewer people  
16 than the ACS does. So I don't know how that would  
17 achieve the objective.

18 Q When it says here that final proposed  
19 questions result from extensive cognitive and  
20 field testing, typically, final proposed questions  
21 are fielded before they're put on a survey,  
22 correct?

1 A Correct.

2 Q So, for example --

3 A This question has been field tested --

4 Q On --

5 A -- on the ACS, three and a half million  
6 households a year. Providence would have asked it  
7 of a couple hundred households.

8 Q Uh-huh.

9 A So it's been field tested.

10 Q In the context of the ACS, correct?

11 A Correct. There is no field test for the  
12 decennial. There's either the decennial or  
13 there's not.

14 Q The end-to-end test tests --

15 A Tests systems, not questions.

16 Q What does that mean?

17 A It tests all of our processes and systems  
18 to see if they work.

19 Q Take that back -- actually, if you flip  
20 to the first page of it. Is this the preliminary  
21 analysis of Alternative D?

22 A Uh-huh.

1 Q Combined B and C, can you tell me what  
2 this is?

3 A This is a short description of the  
4 analysis that the team did of Alternative D.

5 Q And did you review this document?

6 A Yes.

401/403

7 Q Do you agree with it?

8 A I do.

9 Q Who else reviewed this document?

10 A The team, John Abowd.

11 Q Karen Dunn Kelley reviewed it?

12 A Yeah.

13 Q Did Secretary Ross review it?

14 A I would assume so. Again, this was  
15 information provided for his review.

16 Q Did you have conversations about this  
17 memo with Ms. Dunn Kelley?

18 A Yeah. I don't recall a -- a discussion  
19 particularly about this memo, no.

20 Q Do you recall having any conversations  
21 with Secretary Ross about this memo?

22 A No.

1 Q Did you have any conversations with  
2 anyone else at Census -- at Commerce regarding  
3 this memo?

401/403

4 A At --

5 Q At -- did you have any conversations  
6 about this memo with anyone else at Commerce --

7 A So, again, I'm not recalling  
8 conversations about this memo. I mean, you know,  
9 obviously, when we came back with Alternative D,  
10 we said what, you know, we gave our, you  
11 know -- our assessment of Alternative D, and they  
12 took that into consideration. We did not have  
13 detailed conversations like we did about the  
14 original three alternatives.

15 Q You said you didn't have detailed  
16 conversations. Do you remember any conversations  
17 with Commerce about your analysis  
18 of Alternative D?

19 A I don't recall that.

20 Q If you go to 9816. You say that in  
21 sum -- this memo says that, "In sum, Alternative D  
22 would result in poorer quality citizenship data

1       than in Alternative C."

2                   Do you agree? 401/403

3           A     Yes.

4           Q     "It would still have all the negative  
5       cost and quality implications of Alternative B  
6       outlined in the draft January 19th memo to the  
7       Department of Commerce."

8                   Do you agree?

9           A     Yes.

10          Q     So you said a moment ago that the  
11       Secretary took this memo into consideration?

12          A     I believe so. 802

13                   MS. BAILEY:  Objection.  Mischaracterizes  
14       prior testimony.

15       BY MS. GOLDSTEIN:

16          Q     Why do you say that?

17          A     Say what?

18          Q     That they took that into consideration.

19          A     It was provided for his consideration.

20          Q     Okay.  But do you have any personal  
21       knowledge as to what was done with this memo after  
22       Census prepared it?

1 A So Karen -- I think Karen did.

2 Q Anyone else?

3 A I don't think so, no.

4 Q Do you remember exactly what Karen asked  
5 you to do?

6 A Can you help identify people that the  
7 Secretary should talk to?

8 Q And was there a parallel process for  
9 folks in the Census Bureau to talk to stakeholders  
10 about the citizenship question?

11 A A parallel process for us to talk to them  
12 about what?

13 Q About adding the citizenship question.

14 A So, no. So, I mean, the decision point  
15 laid with the Secretary, so Census was not  
16 involved in a side deliberative process on that.

17 Q And other than thinking about who would  
18 have a broad range of perspectives, were there  
19 other considerations in determining who the  
20 Secretary should talk to and who the Secretary  
21 shouldn't?

22 A So I may I -- I think he, you know,

1 wanted to get a broad set of interpretations, both  
2 pro and con.

3 Q Why do you say that?

4 A You know, because most of the feedback in  
5 the -- initially, was all in the con. So they  
6 were looking for, you know, was there somebody who  
7 would speak in favor of the addition of the  
8 question? 401/403/802

9 Q How did -- who told you that?

10 A So I think we were looking for -- we were  
11 trying to find -- the charge was to get a broad  
12 set of perspectives, and that's why we wanted to  
13 have people on both sides.

14 Q So you just testified that most of the  
15 feedback, initially, was all in the con.

16 A Yeah.

17 Q How did you know that most of the  
18 feedback, initially, was all in the con?

19 A Well, you know, it was in the newspaper.  
20 And, you know, people that we had dealt with  
21 before had sent letters to both Secretary and to  
22 me. So that's how we knew.



1 Q Did anyone at Commerce instruct you to  
2 find stakeholders who were in favor of the  
3 citizenship question?

4 A No. It was not an instruction. I mean,  
5 I think we sat around trying, talking about who  
6 the Secretary should talk to, and we wanted to  
7 find, you know, a full range of opinions.

8 Q And we is you and Mr. Lamas?

9 A And Karen, yeah.

10 Q And Karen.

11 Anyone else?

12 A I don't remember anyone else being there,  
13 but there -- you know, there often are others in  
14 the room, but that was the primary people.

15 Q And do you remember anyone else in the  
16 room?

17 A No.

18 Q And do you remember anything else that  
19 Ms. Dunn Kelley said --

20 A No.

21 Q -- concerning this?

22 A No.

1 Q What are these?

2 A This was -- I reached out to a person I  
3 know at AEI, Michael Strain, to see if he or  
4 anyone else would be willing to -- to talk to the  
5 Secretary more from the pro side, as opposed to  
6 con side. So, again, trying to get a more rounded  
7 set of stakeholders involved here.

8 Q Did anyone instruct you to reach out to  
9 AEI?

401/403

10 A No.

11 Q And AEI, for the record, stands for?

12 A American Enterprise Institute.

13 Q Whose idea was it to send solicitations  
14 like this out?

15 A So this was -- to sending it to -- I  
16 mean, it was the general idea that we would try to  
17 find somebody. I knew Michael. I reached out to  
18 him.

19 Q Who else did that team reach out to to  
20 try to find a pro side?

21 A I don't know. I mean, again, this  
22 is -- I think everyone was trying to reach out to

1 A No.

2 Q Are you aware of anyone else on that team  
3 that made phone calls seeking stakeholders for the  
4 pro side?

5 A I'm not aware.

6 Q And Mr. Strain advised you that no one at  
7 AEI was willing to speak favorably about the  
8 proposal, correct?

401/403/802

9 A That is correct.

10 Q Did you have any conversations about  
11 Mr. Strain with Karen Dunn Kelley?

12 A No. This is -- this is the complete  
13 record on that.

14 Q Did you have conversations with anyone  
15 else at Commerce about your communications with  
16 AEI?

17 A No.

18 Q Did you have communications with anyone  
19 else about your communications with AEI on the  
20 citizenship question?

21 A No.

22 (Plaintiffs' Exhibit 18, Email, was

1 Q Did she email you the decision memo?

2 A I don't recall.

3 Q Do you know if you saw the decision memo  
4 before it was finalized?

5 A I think we had a quick turnaround on  
6 something about Option D.

7 Q Did you ask --

8 A But that was -- that was, you  
9 know -- everything was hurried at that stage.

10 Q We'll talk about that in just a moment.

11 Did you ask Ms. Dunn Kelley why the  
12 Census Bureau's recommendations were overruled?

13 A I did not.

401/403/802

14 Q Did she tell you?

15 A She -- well, we were all in the meeting  
16 where the Secretary had expressed some interest in  
17 the -- in the hybrid solution, and that's what he  
18 chose. And so it was, essentially, the Secretary  
19 decided to go with the hybrid solution.

20 Q Is it fair to say, though, that census  
21 never had -- apart from the memos that were  
22 sent --

1 A Right.

2 Q -- that Census never had substantive  
3 conversations with anyone at Commerce about  
4 Option D? 401/403

5 A No. I mean, I'm not sure what you mean  
6 by substantive. Be more specific.

7 Q Other than the memos that were sent from  
8 Census to Commerce about Option D, did anyone from  
9 Census have any conversations about the  
10 Census Bureau's analysis of Option D?

11 A Not that I'm aware of, so.

12 Q And would you have been aware if there  
13 were conversations?

14 A I think I would have been aware, yes.

15 Q So let's talk about what you just  
16 mentioned with the quick turnaround on Option D.  
17 What happened?

18 MS. BAILEY: Objection. Vague.

19 THE WITNESS: So I don't know what you  
20 mean by what happened -- what happened.

21 BY MS. GOLDSTEIN:

22 Q Sure.

1           So we were talking about seeing a draft  
2           of the decision memo, correct?

3           A     Yes.

4           Q     When did you first see a draft of the  
5           decision memo?

6           A     I don't recall exactly when, but, I mean,  
7           it was -- we had an opportunity to make sure that  
8           it was technically correct.

9           Q     Who is we? 401/403

10          A     The Census Bureau.

11          Q     And what do you mean by technically  
12          correct?

13          A     That, you know, there wasn't any  
14          information about Census Bureau, you know,  
15          operations, costs, you know, that sort of stuff  
16          that wasn't accurate.

17          Q     So what was this opportunity that you had  
18          to make sure that the memo was technically  
19          correct?

20                MS. BAILEY: Objection. Vague.

21                THE WITNESS: It was that.

22                BY MS. GOLDSTEIN:

1 A Yeah.

2 Q Led by Dr. Abowd?

3 A Yeah.

4 Q Did you discuss any of the changes that  
5 were proposed to the memo?

6 A I don't recall any major discussions  
7 about that.

8 Q Do you recall what any of the changes  
9 were?

10 A I don't.

11 Q Is there anything that would help you  
12 remember?

13 A Seeing the two versions, but I -- other  
14 than that, I don't recall.

15 Q Other than this process where the  
16 Census Bureau checked to make sure that the  
17 decision memo was technically correct, did the  
18 Census Bureau have any input into that decision  
19 memo?

401/403

20 A No.

21 Q How long did the process of the  
22 Census Bureau making sure that the decision memo

1           A     Yes.

2           Q     And looking at this document now, does  
3     this help -- are you able to identify any changes  
4     that the Census Bureau made to make this document  
5     more technically correct? 401/403

6           A     I can't identify changes. But if I  
7     recall correctly, there were some issues  
8     about, you know, various response rates. You  
9     know, there were, like, corrections to numbers and  
10    stuff like that.

11          Q     Do you remember what any of those  
12    corrections to numbers were?

13          A     I don't.

14          Q     Do you remember which direction the  
15    correction to numbers went, made corrections  
16    higher or lower?

17          A     I don't that either.

18          Q     Who would be the right person to ask  
19    that?

20          A     You know, John Abowd might have  
21    better --

22          Q     Anyone else?



1 A That's where I would start.

2 Q So who wrote this memo?

3 A I don't know.

4 Q Is there anyone who would know?

5 A I imagine the Secretary would know.

6 Q Anyone else?

7 A I don't know. I don't know who wrote  
8 this let- -- memo.

9 Q So if you go to Page 3, the second full  
10 paragraph references surveys from Nielsen. Do you  
11 see that?

12 A Uh-huh.

401/403

13 Q I'm sorry. I need a yes or no.

14 A Yes.

15 Q Did you ever see these surveys from  
16 Nielsen that are referenced in this decision memo?

17 A No.

18 Q Did anyone from the Census ever see the  
19 surveys that were referenced in this decision  
20 memo?

21 A I don't know. But as far as I know,  
22 nobody did.

1 Q When did you first hear about these  
2 surveys from the Nielsen?

3 A I think in the context -- I mean, you  
4 know, Nielsen obviously does surveys --

401/403

5 Q Sure.

6 A -- and we have some interaction with them  
7 on other things. So, you know, I think this was  
8 the first that I had heard about these surveys in  
9 this context, for sure.

10 Q So this was the first time reviewing --

11 A Right.

12 Q -- this March decision memo when you  
13 heard about Nielsen adding questions on the ACS --

14 A Uh-huh.

15 Q -- on sensitive topics?

16 A Uh-huh.

17 Q Sorry. I need a yes or no.

18 A Yes.

19 Q And I just want to make sure I'm clear.

20 No one at Census has reviewed the actual surveys,  
21 correct?

22 A Not that I know of.

1 Q Did you participate in any calls with  
2 anyone from Nielsen regarding the citizenship  
3 question?

401/403

4 A No.

5 Q Do you know if anyone at Census did?

6 A No.

7 Q Have you seen the underlying data from  
8 these Nielsen surveys?

9 A I have not.

10 Q Do you know if anyone at Census has?

11 A I don't.

12 Q I will take that back.

13 MS. GOLDSTEIN: I'm about to move on to  
14 another topic. So I don't know if you want to  
15 take a break for lunch or keep going.

16 MS. BAILEY: Do you know how lengthy that  
17 topic's going to be?

18 MS. GOLDSTEIN: It's going to be a little  
19 bit long.

20 MS. BAILEY: Do you have a preference?  
21 We're at three hours now.

22 How do you feel?

1 THE WITNESS: Just keep going.

2 MS. BAILEY: Okay.

3 BY MS. GOLDSTEIN:

4 Q Is there any reason why the procedures  
5 for adding questions to the decennial would be  
6 less rigorous than the process of adding questions  
7 to the ACS? 401/403

8 MS. BAILEY: Objection.

9 THE WITNESS: No.

10 BY MS. GOLDSTEIN:

11 Q No reason why adding changes to the short  
12 form would require less testing than changes to  
13 the ACS, correct?

14 A Not for an untested question, so, no.

15 Q There's no reason why adding changes to  
16 the short form would require less testing than  
17 changes to the ACS?

18 A No.

19 Q I'm going to hand you back what I had  
20 previously marked as Exhibit 16 to this  
21 deposition.

22 And let's go back to Question 31, which

1 is over on 9832. And we had talked before about  
2 the cognitive and field testing the question --  
3 the proposed questions typically undergo, correct?

4 A Right.

401/403

5 Q What testing was done for the proposed  
6 changes to the race and ethnicity question?

7 A So those were part of the  
8 National Content Test --

9 Q What is that?

10 A -- mid decade.

11 It's a survey that tried different  
12 versions of the race and ethnicity questions to  
13 see how people would answer them.

14 Q And what's the purpose of that?

15 A To understand the data quality for  
16 different versions of the question.

17 Q And I know that one thing that goes into  
18 data quality is the number of people responding.

19 A Yep.

20 Q Anything else that goes into data quality  
21 in that context?

22 A How -- how, you know, sort of easily,

1 people sort of respond to the questions and  
2 the -- in the case of the race and ethnicity,  
3 the -- you know, the number of people that are  
4 sort of classified as -- you know, that don't have  
5 a precise race and ethnicity category.

6 Q How can you tell?

401/403

7 A So, you know, the current method  
8 classifies lots of people as -- as -- you know,  
9 there are -- there's kind of a catchall category.  
10 I'm not the expert on this.

11 Q Who is?

12 A I would call Karen Battle. So I know  
13 that we were looking for ways to have more precise  
14 data, so.

15 Q What other kinds of testing was done for  
16 the purposed changes to the race and ethnicity  
17 question?

18 A I believe that's the primary testing that  
19 was done. I mean, there was a part of the 2020  
20 census, the alternative questionnaire experiment;  
21 that was an early version of that.

22 Q And what is that?

1           A    That was another -- you know, that was  
2   part of the census that was sent to a small number  
3   of housing units as a test.

4           Q    And what was it testing?

5           A    Alternative forms of questions that were  
6   already on the census, like race and ethnicity.

7           Q    And more than just race and ethnicity?

8           A    I think it was just race and ethnicity.

9           Q    And what's the goal of testing those  
10  alternative forms? 401/403

11          A    To get more precise data.

12          Q    And to determine the quality of the  
13  question?

14          A    Yeah.

15          Q    And the quality of the data received?

16          A    Yeah.   Yeah.

17          Q    And when a new question is added to the  
18  census, what kind of cognitive testing is done?

19          A    So -- so -- with a completely new  
20  question, there could be both some small scale  
21  tests done in a lab setting and then some sort  
22  of, you know, test questionnaire that would be

1 sent out.

2 Q What are these small scale tests that are  
3 done in a lab?

4 A Where you're actually administering the  
5 survey and getting immediate feedback from --  
6 like, people having difficulty understanding the  
7 question.

401/403

8 Q Why is that important?

9 A Just to understand what are the reasons  
10 that people don't -- can't answer the question  
11 correctly.

12 Q Any other reasons why that's important?

13 A No. That's -- to understand that when we  
14 ask a question, people understand it and are  
15 giving us an answer that meets the objective.

16 Q Sure. And you mention test  
17 questionnaires as a kind of cognitive research?

18 A Yeah.

19 Q Can you tell me what that entails?

20 A So the -- just -- so the -- then you'd  
21 send it out into the field and see if you get good  
22 responses. So there's a difference between



1 sitting in a lab and asking some more questions  
2 and somebody actually filling it out when they  
3 have it in their house.

4 Q Other kinds of testing to new or changed  
5 questions, other than the Content Test, the  
6 cognitive testing, and you discussed before the  
7 end to end.

8 A Yeah.

401/403

9 Q Anything else?

10 A That's about it.

11 Q So earlier, you testified that the  
12 end-to-end testing tests systems, correct?

13 A Correct.

14 Q What systems do you refer to?

15 A The systems with which we use to conduct  
16 the census.

17 Q What are those?

18 A So data capture, so the -- you know,  
19 electronic, you know, survey instrument.

20 Q Uh-huh.

21 A The paper data capture systems, all the  
22 mailing, all the receipt of mail, the electronic

1 systems, the telephone questionnaire assistance  
2 center, the iPhones that enumerators use out in  
3 the field, all of that.

4 Q Uh-huh. Does the Census Bureau test  
5 how -- the order of questions?

6 A Yes.

401/403

7 Q Where? What? Which of these tests?

8 A So like the National Content Test might  
9 be a place -- I don't think they did -- I don't  
10 think they did in that particular instance, so.

11 Q Does the end-to-end test test the order  
12 of questions?

13 A No. The end-to-end test doesn't have any  
14 test about the questions, at all.

15 Q There's no response rates for the  
16 end-to-end test?

17 A We track the response rates, but we're  
18 not -- it's not a life measurement exercise. It's  
19 really more of a testing systems exercise. So  
20 tracking response rates while we're live in the  
21 field is something we do in 2020, so we do that  
22 during the end-to-end test, as well. For

1 operational reasons, not for --

2 Q So if --

3 A -- not for quality assessment reasons.

4 Q If the citizenship question had been on  
5 the 2018 end-to-end test, would that provide data  
6 as to the response rates for the citizenship  
7 question?

8 MS. BAILEY: Objection. Calls for  
9 speculation. 401/403

10 THE WITNESS: We would have had  
11 some -- we could have gained some insight into the  
12 item nonresponse rates for that question.

13 BY MS. GOLDSTEIN:

14 Q And would you have also gained insight  
15 into effects on total response rate if this  
16 citizenship question was on the test questionnaire  
17 for the 2018 end-to-end test?

18 MS. BAILEY: Objection. Calls for  
19 speculation.

20 THE WITNESS: That would have to have  
21 been a test objective, and we would have to set up  
22 an experiment to do that.

1 BY MS. GOLDSTEIN:

2 Q How would you -- how could you do that?

3 MS. BAILEY: Objection. Calls for  
4 speculation.

5 BY MS. GOLDSTEIN:

6 Q How could you set up a test objective  
7 that would test response rates with the inclusion  
8 of a citizenship question?

9 MS. BAILEY: Same objection.

10 THE WITNESS: Some sort of randomized  
11 experiment.

12 BY MS. GOLDSTEIN: 401/403

13 Q What would that be?

14 A I can't tell you exactly what that would  
15 be. We'd have to have some methodologist work on  
16 that.

17 Q But that's the kind of thing the  
18 Census Bureau is equipped to do?

19 A Yes.

20 Q And it did not happen with the  
21 citizenship question, correct?

22 A No.

1 Q Why is it -- is it important to see how a  
2 question -- withdrawn.

3 The content testing that was performed,  
4 were all of the questions that are on the planned  
5 short form, other than the citizenship question,  
6 included in the content testing?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: I don't know, actually.

9 BY MS. GOLDSTEIN:

10 Q Who would know?

11 A Karen Battle.

12 Q Did the questionnaire that was used for  
13 the end-to-end testing include all questions on  
14 the short form except for the citizenship  
15 question?

401/403

16 A Yes.

17 Q Does the Census Bureau do focus group  
18 testing?

19 A So, for cognitive testing?

20 Q Is that the same thing?

21 A No.

22 Q Okay.

1 sensitivity. Sometimes it's things people don't  
2 know. Like, we ask them about how -- when  
3 their -- when their housing unit was built.  
4 People often seem not to know the answer to that  
5 question.

6 Q Any other ways to test for sensitivity?

7 MS. BAILEY: Objection. Vague.

8 THE WITNESS: No. To test for  
9 sensitivity? No.

10 BY MS. GOLDSTEIN:

11 Q To see how sensitive a question is on a  
12 survey?

13 A No. Not that I -- I mean, that's not my  
14 field, so I don't know.

15 Q And just remind me, who is the expert on  
16 this at the Census Bureau?

17 A Nancy Bates.

18 Q Is it fair to say that the sensitivity of  
19 a question can change over time? 401/403

20 A Yes.

21 Q Why?

22 A Lots of attitudes change over time.

1 Q Can the political climate impact the  
2 sensitivity of a question?

3 MS. BAILEY: Objection. Calls for  
4 speculation. 401/403

5 THE WITNESS: Potentially.

6 BY MS. GOLDSTEIN:

7 Q Can you think of other things that might  
8 impact the sensitivity of a question?

9 MS. BAILEY: Objection. Calls for  
10 speculation.

11 THE WITNESS: Not off the top of my head,  
12 no.

13 BY MS. GOLDSTEIN:

14 Q Can the order of questions impact results  
15 to a survey? 401/403

16 A You know, I understand from the  
17 literature that it can. I'm not -- you know, I'm  
18 not an expert on that, but, you know, I think  
19 especially in a large survey, I think it can.

20 Q Is that something that the Census Bureau  
21 tests for the decennial?

22 A So for the decennial, the short form, I

1 think, it's less of a concern than it is for  
2 something large, like the ACS, where you have  
3 different topic modules and stuff like that.

4 Q Why do you say that?

5 A So -- because I think that's when  
6 question order matters, is in a large complex  
7 survey. There's various framing issues and stuff  
8 like that for people.

9 Q Are you aware of any studies that say  
10 that question order does not matter for a shorter  
11 survey?

12 A So I know that people are more concerned  
13 about it on a longer survey. I've never seen  
14 anyone argue the counter -- you know, the other  
15 way, saying that it doesn't -- I've never seen  
16 anyone say it doesn't matter. I just see that it  
17 matters more for a large complex survey.

18 Q But it matters some for a short survey?

19 A Yeah, again, I'm not a survey  
20 methodologist, especially a household survey  
21 methodologist, so I can't speak expertly towards  
22 that.



1 that sort of stuff, you know, it all matters, so.

2 Q Is there a -- we talked a few minutes ago  
3 about the political climate might impact the  
4 sensitivity of a question?

5 A Uh-huh. Yes.

6 Q Can political climate impact how a  
7 question functions?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't know what you mean  
11 by how a question functions.

12 BY MS. GOLDSTEIN:

13 Q Fair enough.

14 Can the political climate impact response  
15 rates? 401/403

16 MS. BAILEY: Objection. Calls for  
17 speculation.

18 THE WITNESS: So, you know, if, you know,  
19 one of the factors in response rates is distrust  
20 in government generally, if the political climate  
21 increases or decreases that, it could have an  
22 impact on response rates.

1 THE WITNESS: Take this one back, too?

2 MS. GOLDSTEIN: Can you mark this for me,  
3 please?

4 (Plaintiffs' Exhibit 19, Email, was  
5 marked.)

6 BY MS. GOLDSTEIN:

7 Q I'm showing you what's been marked as  
8 Plaintiffs' Exhibit 19. It is Bates stamped 2292  
9 and 2293. It is an email from Earl Comstock dated  
10 2/2/18.

401/403

11 Do you recognize this document?

12 A You know, not per se, but this  
13 is -- looks like a transmission of the answers  
14 from Burton to Earl.

15 Q And does that comport with your  
16 recollection as to how those 35 questions and  
17 answers were sent over to Commerce?

18 A Yeah. There was drips and drabs.

19 Q And the subject of this is citizenship  
20 question complete set?

21 A Yeah.

22 Q So it is your understanding that on

1 February 2, 2018 the complete set of those 35  
2 questions were sent to Commerce, correct?

3 A If that's what that means, yeah.

4 Q Let me give you the attachment to this  
5 email.

6 (Plaintiffs' Exhibit 20, Questions on the  
7 Jan 19 draft Census Memo on the DOJ Citizenship  
8 Question Reinstatement Request attachment, was  
9 marked.)

401/403

10 BY MS. GOLDSTEIN:

11 Q I'm showing you what's been marked as  
12 Plaintiffs' Exhibit 20 -- I'm sorry.

13 MS. BAILEY: Thank you.

14 BY MS. GOLDSTEIN:

15 Q It is 2294 --

16 A Right.

17 Q -- to 2305. It is another copy of the 35  
18 questions that we had just reviewed on Exhibit 16,  
19 correct?

20 A Okay.

21 Q Yes?

22 A Yes.

1 Q And this is, as I understand it, the  
2 attachment to Exhibit 19.

3 A Okay.

4 Q So would this be the final version that  
5 is sent over to Commerce?

6 A I'm not sure that's the final version,  
7 but it's probably pretty close.

8 Q Do you recall any changes that were made  
9 after this?

10 A I -- after February 2nd, I -- you know, I  
11 can't tell you whether there were or not.

12 Q From Census?

401/403

13 A Yeah.

14 Q Do you recall asking for any changes  
15 after December 2nd to the 35 questions?

16 A No.

17 Q If someone had made changes, from Census,  
18 to these questions, would you have seen it?

19 A Probably. But I'm just saying I  
20 don't -- I don't recall whether this was the last  
21 version or not, so.

22 Q If you go to Question 31 --

1 A Okay.

2 Q -- it begins on 2303 to 2304, this is the  
3 same language that we saw on Exhibit 16, correct?

4 A I think so.

5 Q And, to your knowledge, is this -- this  
6 is the well-established process, correct?

7 A Yes, a summary of it.

8 Q And this Question 31 on 2303 and 2304,  
9 this is the language that the Census Bureau  
10 believes describes that well-established process,  
11 correct?

401/403

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: Yes.

14 BY MS. GOLDSTEIN:

15 Q The Census Bureau wrote the language in  
16 31?

17 A Yes.

18 Q To your knowledge, did Census ever change  
19 the language in Question 31?

20 A Again, I don't know. I don't know for  
21 sure that this is the last version we sent.

22 Q Do you recall anyone at Census proposing

1 any changes to the language in Question 31?

2 A No. I mean, but, obviously, we're still  
3 editing responses here, so that -- that could  
4 happen. It's a relatively longer answer than most  
5 of the other ones, so. 401/403

6 Q But you do not recall anyone at Census  
7 changing the language of Question 31 following  
8 this language, correct?

9 A No. I don't recall, one way or the  
10 other.

11 Q And is there anything that would help  
12 your recollection?

13 A I mean, again, if this is not the last  
14 version, the last version would answer that  
15 question.

16 Q Well, this one was in -- okay.  
17 So who is Mr. Reist?

18 A He works for Al.

19 Q Who is Al?

20 A Al Fontenot.

21 Q And what is Al Fontenot's job?

22 A He's the head of decennial.

1 Q And what is Mr. Reist's job?

2 A So he's the head of their budget and  
3 communications area.

4 Q And Mr. Reist sends this, to among  
5 others, Earl Comstock, correct?

6 A Uh-huh.

7 Q I'm sorry. I need a yes or no.

8 A Yes.

9 Q And you were cc'd on this?

10 A Yes.

11 Q And had you reviewed these responses  
12 before Mr. Reist sent them to Mr. Comstock?

13 A You know, I probably perused them. I  
14 certainly didn't proof them or anything like that.

15 Q But as we had talked about before, these  
16 responses, these 1 to 35 questions were, in your  
17 view, accurate, correct?

401/403

18 A Yes.

19 Q Because you wouldn't --

20 So -- and that includes Question 31,  
21 correct?

22 A Yes.

1 Q I'll take that back.

2 I'm going to show you what had been  
3 previously marked as Exhibit 16 to the Abowd  
4 deposition. If you bear with me for just a  
5 moment.

6 It is another version of those 35  
7 questions, this time that were received in the  
8 original administrative record. It is Bates  
9 stamped 1286 to 1297. And if we could go back  
10 over to Question 31, it is on 1296. 401/403

11 The answer to Question 31 in this version  
12 says, "Because no new questions had been added to  
13 the decennial census for nearly 20 years, the  
14 Census Bureau did not feel bound -- bound by past  
15 precedent when considering the  
16 Department of Justice's request. Rather, the  
17 Census Bureau is working with all relevant  
18 stakeholders to make ensure that the legal and  
19 regulatory requirements are filled and that  
20 questions will produce quality and useful  
21 information for the nation. As you're aware, that  
22 process is ongoing at your direction."



1           That's pretty different than the language  
2 of Question 31 we've seen before, right?

3           A    Yes.

4           Q    It does not describe the well-established  
5 process we've been discussing, correct?

6           A    It does not. 401/403

7           Q    It does not talk about the  
8 well-established process, at all, correct?

9           A    Correct.

10          Q    It doesn't --

11          A    Well, it sort of summarizes.

12          Q    Where?

13          A    To work with all relevant stakeholders to  
14 ensure the legal and regulatory requirements are  
15 filled and questions will produce quality  
16 information, so --

17          Q    Does this --

18          A    -- that's what the process is meant to  
19 do.

20          Q    Does this answer to Question 31 discuss  
21 the process by which agencies evaluate their data  
22 needs?

1 A No.

2 Q And does it say that in order to be  
3 included, proposals must demonstrate a clear  
4 statutory and regulatory need for data?

5 A It does say legal and regulatory  
6 requirements are filled.

7 Q Does it mention testing, at all?

8 A No. 401/403

9 Q Does it mention public comment?

10 A No.

11 Q Does it mention --

12 A No -- I don't -- it says all relevant  
13 stakeholders. That includes public comment.

14 Q Okay. Does it mention OMB specifically?

15 A It says relevant stakeholders, so, you  
16 know --

17 Q Does it mention OMB specifically?

18 A No. It does not.

19 Q Okay. Do you know who wrote the language  
20 in Number 31?

21 A I do not.

22 Q When was the first time you saw the

1 language in -- on 1296?

2 A On 1296, I think I've seen a version like  
3 this before, but, you know, I'm not sure where  
4 this came from.

5 Q Have you seen it before today?

6 A Yes.

7 Q On Question 31? 401/403

8 A On Question 31.

9 Q Do you know if Commerce wrote this  
10 language or Census Bureau wrote this language?

11 A I don't know.

12 Q What would tell you?

13 A I -- you know, seeing who wrote -- who  
14 sent the last version. So, I don't know.

15 Q So I previously showed you a version that  
16 Dr. Abowd represented was the final version --

17 A Right.

18 Q -- do you recall?

19 A Yeah.

20 Q And that version had the longer  
21 Question 31 language --

22 A Right.

1 Q -- correct?

2 A Yes.

3 Q Yeah?

4 A Yes.

5 Q And so if we understand the version that  
6 Dr. Abowd said was final to include the longer  
7 Question 31, does that tell you anything about who  
8 changed the language on 1296? 401/403

9 MS. BAILEY: Objection. Form.

10 THE WITNESS: Yeah. I don't -- no, not  
11 particularly. Probably -- not Dr. Abowd, but --  
12 BY MS. GOLDSTEIN:

13 Q Did you change the language in 31?

14 A I did not.

15 Q Did anyone at Census change the language  
16 in 31?

17 A I don't know.

18 Q Did you review this language in 31 before  
19 it was sent to Commerce?

20 A I --

21 MS. BAILEY: Objection. Asked and  
22 answered.

1 THE WITNESS: I don't recall.

2 BY MS. GOLDSTEIN:

3 Q Is there anything that would help you  
4 recall?

5 A I don't know.

6 Q Do you know why this language was  
7 changed?

8 MS. BAILEY: Objection. Asked and  
9 answered.

10 THE WITNESS: I assume it's an attempt to  
11 summarize the longer answer of the question.

12 BY MS. GOLDSTEIN:

401/403

13 Q Were there any discussions that you took  
14 part in as to why this language was changed?

15 MS. BAILEY: Objection. Asked and  
16 answered.

17 THE WITNESS: Do not recall.

18 BY MS. GOLDSTEIN:

19 Q If the Census Bureau had changed this  
20 language, would John Abowd have been aware of the  
21 change?

22 A Yes. I would think so.

1 Q Yes, you would?

2 A Yes.

3 Q Had Census Bureau, to your knowledge,  
4 ever taken the position that it was not bound by  
5 past precedent when considering an agency's  
6 request before?

7 A No. And I think -- I think the only  
8 degree to which the Census Bureau in this instance  
9 was not following past procedures is because the  
10 Census Bureau took the position that the question  
11 had been tested via the ACS. That's the only  
12 aspect of the process that -- that we believed  
13 didn't need to be undergone.

14 Q And when you say the Census Bureau took  
15 that position, who in the Census Bureau?

16 A You know, I think the technical team,  
17 every -- you know, management, everybody agreed  
18 that this question has been thoroughly tested on  
19 the ACS.

20 Q Are there -- has a question ever moved  
21 from the ACS to the short form before?

22 A Not that I know of.

1 Q And are there any quality standards that  
2 address moving questions from one survey to  
3 another?

4 A Not in particular. I mean, quality  
5 standards are roughly the same across all the  
6 surveys. Obviously, the census is different than  
7 the surveys in the sense that it's a census. We  
8 ask everybody. So, you know, generally, you get  
9 better quality on the census than you would in a  
10 survey because you're asking everybody.

11 Q Any statistical standards that govern  
12 moving a question from the ACS to the decennial?

13 A Not standards that don't apply everywhere  
14 else.

15 Q What do you mean?

16 A I mean, the statistical standards  
17 are -- count for everything, not just -- so --

18 Q But you're not aware of any guidance that  
19 goes to the process of moving a question from the  
20 long form to the short form or the ACS to the  
21 short form, correct?

401/403

22 A No.

1 Q Some are on paper?

2 A Yes.

3 Q Some are in person?

4 A Well, most surveys are multimode --

5 Q Okay.

6 A -- any more, so.

7 Q Is it fair to conclude that a question is  
8 going to perform the same way on one survey that  
9 it might on a different survey?

10 MS. BAILEY: Objection. Calls for  
11 speculation.

12 THE WITNESS: It isn't necessarily.

13 BY MS. GOLDSTEIN:

401/403

14 Q Why not?

15 A Well, the -- you know, the modes will  
16 matter.

17 Q What else matters?

18 A The -- you know, the length and  
19 complexity of the survey.

20 Q What other sorts of things can cause a  
21 question to perform different ways on different  
22 surveys?



1           A    You know, we talked earlier about, you  
2   know, changing attitudes about the government and  
3   stuff like that.   So if one survey is seen as --  
4   as, you know, coming from the government or a part  
5   of the government that they have bigger issues  
6   with, it may perform differently than, you  
7   know -- so Census Bureau does pretty well with the  
8   surveys because the public generally tends to  
9   trust the Census Bureau, so.

401/403

10          Q    But even within the same survey, can a  
11   changing political climate impact how a question  
12   performs?

13               MS. BAILEY:   Objection.   Calls for  
14   speculation.

15               THE WITNESS:   Again, it might.   There's  
16   been no analysis to say that, one way or the  
17   other.

18   BY MS. GOLDSTEIN:

19          Q    And that's my next question.   Has the  
20   Census Bureau performed any analysis as to whether  
21   or not the citizenship question will perform the  
22   same way on the short form as it has on the ACS?

1           A    No.   We don't -- but I'll come back to  
2   say we don't have a good way of doing that.

3           Q    Would the National -- if the citizenship  
4   question had been included in the  
5   National Content Test --

401/403

6           A    So that -- go ahead.

7           Q    I'm sorry.

8           If the citizenship question had been  
9   included in the National Content Test, would that  
10   have given the Census Bureau any information as to  
11   response rates?

12           MS. BAILEY:   Objection.   Hypothetical.

13           THE WITNESS:   Most likely not.   So you  
14   have to remember that the context of the decennial  
15   census is done as a nationwide activity with a  
16   huge advertising outreach and partnership campaign  
17   that you're never going to replicate in a small  
18   scale test.   You're not going to replicate it on  
19   the ACS.   To the degree that you think the  
20   political environment is something that might  
21   impact response rates to a particular question,  
22   you need to mimic the political environment that

1 will exist when they're doing it. And the -- you  
2 know, the amount of exposure that the census will  
3 get during the live census is, you know, part of  
4 that environment, and we just can't test that. So  
5 the only thing we can test right now is whether  
6 people understand the question, and whether they  
7 can answer it, and whether they answer it at a  
8 rate sufficient to provide high-quality data. The  
9 answer to those questions is all in the  
10 affirmative.

11 BY MS. GOLDSTEIN:

12 Q In the context of the ACS, correct?

13 A In the context of the ACS. Or in the  
14 context of -- of that 2018 end-to-end test. We  
15 wouldn't have learned anything in addition to  
16 that, so.

17 Q The -- if the citizenship question had  
18 been included in the 2018 end-to-end test, would  
19 you have gotten item nonresponse rate data?

20 MS. BAILEY: Objection. Calls for  
21 speculation.

401/403

22 THE WITNESS: Yes. We would have gotten

1 item nonresponse rate data. It would not  
2 have -- it would not have answered the question of  
3 what things would look like during the 2020  
4 census, no more than the ACS does.

401/403

5 BY MS. GOLDSTEIN:

6 Q Why do you say that?

7 A Because they're both done outside of that  
8 context.

9 Q So the race and ethnicity proposed  
10 changes were tested, correct?

11 A They were tested to see if people  
12 understood and could answer the question and what  
13 the relative data quality of the different  
14 questions was. The experiment was against the  
15 different questions.

16 Q Is it possible to test a survey -- so --

17 A We could have tested two versions of a  
18 citizenship question --

19 Q And the census --

20 A -- that might have been informative, but  
21 not whether a, you know, citizenship question  
22 versus no citizenship question.

1 Q Why couldn't you have tested that?

2 A What?

3 Q Why could -- a citizenship question  
4 versus a non- -- no citizenship question?

5 A I think -- I just argued that. Without  
6 doing it in decennial, we won't know what  
7 that -- in that context.

8 Q So just to make sure I understand. It's  
9 your position that we can't know how the  
10 citizenship question performs on the census until  
11 you have a census?

12 MS. BAILEY: Objection. Mischaracterizes  
13 prior testimony.

14 BY MS. GOLDSTEIN:

15 Q Is that a fair summary?

16 A So that in -- in the 2020 census, the  
17 environment will be radically anything that we can  
18 mimic in a test.

19 Q Which is always the case for the  
20 decennial?

21 A Which is always the case.

22 MS. GOLDSTEIN: Why don't we take a break

1 A Uh-huh.

2 Q I'm sorry?

3 A Yes.

4 Q And if we look at F, explore nonfederal  
5 surveys for research on the impact of citizenship  
6 questions on survey response rates, do know you if  
7 the Census Bureau has done that?

8 A I -- I don't know.

9 Q And, again, would Ms. Battle be the  
10 person who knows this?

11 A Yes.

12 Q Anyone else?

13 A Well, members of her team.

14 Q Sure. And what would nonfederal surveys  
15 for research on the impact of citizenship  
16 questions on survey response rates tell us?

17 A Same thing that E would, what other  
18 people have experienced.

19 Q And let's look at G, conduct a  
20 National Content Test with a split sample where  
21 half the respondents received the citizenship  
22 question and half do not. Comparing the response

1 rates across the two groups would be the primary  
2 way to test the impact of the citizenship question  
3 on survey response rates.

4 Has this sort of test been run for the  
5 citizenship question? 401/403

6 A It has not, as far as I know.

7 Q And do you agree that this methodology  
8 set forth in Subparagraph G would be a way to test  
9 the impact of the citizenship question on survey  
10 response rates?

11 MS. BAILEY: Objection. Form.

12 THE WITNESS: It -- yes. It could be.

13 BY MS. GOLDSTEIN:

14 Q Do you know of any plans to test the  
15 citizenship question in this form?

16 A No, I do not.

17 Q I'll take that back. Thank you.

18 Part of your job, Dr. Jarmin, is to  
19 appoint people to advisory committees; is that  
20 correct?

21 A Yes.

22 Q And what is the role of advisory

1 committees in the decennial census?

2 MS. BAILEY: Objection. Vague.

3 THE WITNESS: So advisory committees,  
4 largely, are to give advise on various  
5 Census Bureau methods and operations, how Census  
6 can reach out to various communities to do our  
7 job.

8 BY MS. GOLDSTEIN:

9 Q Why does the Census Bureau have advisory  
10 committees?

11 A Well, I think we try to be, generally,  
12 transparent in how we do our business. The  
13 advisory committees are one way of achieving that.

14 Q How many advisory committees does the  
15 Census Bureau have that are involved in the  
16 decennial census?

17 A Two. 401/403

18 Q What are those two?

19 A The National Advisory Committee and the  
20 Census Scientific Advisory Committee.

21 Q Can you tell me what the responsibilities  
22 of the National Advisory Committee are?



1           A    So National Advisory Committee is largely  
2   made up of stakeholder -- representative  
3   stakeholder groups, largely from hard-to-count  
4   communities to advise us on how to properly reach  
5   out to be able to make sure those communities are  
6   counted.

401/403

7           Q    And the Census Scien- -- the Census  
8   Scientific Advisory Committee, what is that?

9           A    Sort of all scientific methodology  
10   matters across the Bureau.

11          Q    So can you talk to me about how the  
12   National Advisory Committee is typically involved  
13   in the decennial census process?

14          A    So -- well, we have, you know, two  
15   meetings a year, and, you know, they've been kept  
16   apprised of all the planning and development of  
17   the 2020 design throughout the decade.   So, you  
18   know, been able to comment on it all along.

19          Q    When you say they've been kept apprised  
20   of the 2020 design, what do you mean?

21          A    Of how we're going to do the 2020 census.

22          Q    When was, if at all, was the

1 National Advisory Committee notified of the  
2 citizenship question?

3 A So I believe when it became public, that  
4 the request from Art Gary had come in.

5 Q Is the National Advisory Committee  
6 typically consulted by Census Bureau before the  
7 Census Bureau makes decisions --

8 MS. BAILEY: Objection. Vague.

9 BY MS. GOLDSTEIN: 401/403

10 Q -- regarding the decennial census?

11 A With a subset of decisions.

12 Q What kind --

13 A We can't consult them on every decision  
14 we make on a huge program like the census --

15 Q Of course.

16 A -- but generically, they're kept apprised  
17 of our plans and in a timely input, that they  
18 could have input on ultimate decisions.

19 Q And why is it important for the  
20 National Advisory Committee to have input on these  
21 decisions?

22 A We think that it helps us do a better

1 census.

2 Q And you just distinguished between some  
3 decisions that you're not able to keep the  
4 National Advisory Committee in the loop for and  
5 some that you are.

401/403

6 A Right.

7 Q Can you explain the kinds of decision  
8 that the National Advisory Committee is brought  
9 into the loop on?

10 A So they were brought in, you know, on our  
11 basic, you know, multimode collection strategy.  
12 They're -- they have some input on our  
13 communications and outreach program that's been  
14 particularly interesting to them. They were  
15 apprised of the National Content Test and other  
16 sort of mid-decade testing activities.

17 Q Is it fair to say that the  
18 National Advisory Committee is involved in the  
19 bigger decisions of the Census Bureau with respect  
20 to the decennial census?

21 A Generally, yeah.

22 Q Okay. And is there a specific mechanism

1 for the --

2 A So can I go back?

3 Q Absolutely.

4 A They have input on -- let's be clear.

5 They are not involved in any decision-making

6 processes.

7 Q So that's what I'm curious about. How --

8 what's the process for the National Advisory

9 Committee to give input, and how does that get

10 back to the Census?

401/403

11 A So there's --

12 MS. BAILEY: Objection. Compound.

13 THE WITNESS: There's a formal way that

14 all the advisory committees, CSAC and NAC, after

15 each meeting, they give written recommendations to

16 the Bureau.

17 BY MS. GOLDSTEIN:

18 Q What form do those recommendations take

19 place?

20 A What do you mean, what form? They're

21 written.

22 Q It's like a memo?

1 A Yeah.

2 Q Who does it go to?

3 A The director.

4 Q Who is you, right now?

5 A And then, you know, disbursed to various  
6 parts of the Bureau for response and action.

7 Q And typically, when you get a memo from  
8 NAC or CSAC, what is your process for dealing with  
9 it? 401/403

10 MS. BAILEY: Objection. Vague.

11 THE WITNESS: So we have a relatively  
12 formal process by which it gets disseminated to  
13 the various subject matter experts that need to  
14 weigh in on it, and then responses are drafted  
15 and, you know, it's all, you know, delivered back  
16 to NAC or CSAC, whichever the case may be.

17 BY MS. GOLDSTEIN:

18 Q And it's the same for NAC and CSAC?

19 What's the timeline for delivering back  
20 to the NAC?

21 A So we usually try do it as quickly as  
22 possible, but sometimes some of these things take,

1 you know, some time to sort through. But  
2 certainly before the next meeting.

3 Q Does the NAC play any role in changing or  
4 adding questions to the census?

5 A When we've contemplated changes, they've  
6 weighed in on that, but they don't play a role  
7 in -- I mean, they can suggest, like anybody else  
8 can, but they don't have a -- they don't have any  
9 more formal role than anybody else does in that  
10 regard.

401/403

11 Q Did the NAC weigh in on the proposed  
12 changes to the race and ethnicity question?

13 A I believe they did. I was not an active  
14 NAC meeting attendee at that time, but it's my  
15 understanding that they -- that they weighed in on  
16 that.

17 Q Do you know how they weighed in?

18 A You know, I think the NAC is a diverse  
19 group of people. Race and ethnicity questions are  
20 something that never make everybody happy, so I  
21 think there was lots of discussion amongst  
22 different viewpoints of the NAC about what was the

1 best approach to make.

2 Q Did the NAC ultimately make a  
3 recommendation?

4 A I'd have to go back to see what their  
5 recommendation was.

401/403

6 Q You don't recall?

7 A I don't recall.

8 Q What about the MENA changes?

9 A Yes. That would be one of the  
10 controversial issues that was discussed amongst  
11 the NAC, so.

12 Q For the record, can you just explain what  
13 the proposed MENA changes were?

14 A It was to add MENA as a separate category  
15 on a combined race and ethnicity question.

16 Q So when we talk about changes to the race  
17 and ethnicity question, are the MENA changes part  
18 of that conversation?

19 A Yes.

20 MS. GOLDSTEIN: Can we stamp this,  
21 please?

22 I'm going to apologize. These are not

1 stamped.

2 (Plaintiffs' Exhibit 22, U.S. Department  
3 of Commerce Census Bureau National Advisory  
4 Committee on Racial, Ethnic and Other Populations  
5 Charter, was marked.)

401/403

6 BY MS. GOLDSTEIN:

7 Q I'm showing what's been marked as  
8 Plaintiffs' Exhibit 22. It's titled U.S.  
9 Department of Commerce Census Bureau National  
10 Advisory Community on Race and Ethnicity and Other  
11 Populations Charter. It is a four-page document.

12 Do you recognize this document?

13 A I'm not sure I've seen this or not. It  
14 looks like pretty standard -- standard boilerplate  
15 for advisory committee charter.

16 Q So you've seen charters like this before?

17 A Yes.

18 Q Okay. And if we go to Section 3,  
19 objectives and scope of activities, it states that  
20 "The committee will advise the director of the  
21 Census Bureau."

22 That's you, correct?



1 A Yep.

2 Q "On the full range of economic housing,  
3 demographic socioeconomic, linguistic,  
4 technological, methodological, geographic,  
5 behavioral and operational variables affecting the  
6 cost accuracy and implementation of Census Bureau  
7 programs and surveys, including the decennial  
8 census."

401/403

9 Correct?

10 A Uh-huh. Yes.

11 Q And so this charter -- does the  
12 citizenship question fall within this scope of  
13 activities?

14 MS. BAILEY: Objection. Form.

15 THE WITNESS: Yes, it would.

16 BY MS. GOLDSTEIN:

17 Q If you go further down, it explains that  
18 "The committee will address census policies,  
19 research and methodology tests, operations,  
20 communications/messaging and other activities to  
21 ascertain the need -- ascertain needs and best  
22 practices to improve Census's surveys, operations

1) and programs."

2) Correct?

401/403

3) A Correct.

4) Q As part of this mandate, did the

5) NAC -- you've mentioned that the NAC weighed in on

6) the citizenship question, correct?

7) A Yes, they did.)

8) Q And --

9) A I was not in attendance at that meeting,

10) though, so.

11) Q Other than the meeting that you've

12) referred to before, did the NAC weigh in, at all,

13) on the citizenship question?

14) A Not that I know of.

15) Q If you go to the next paragraph, it

16) mentions that the committee, the NAC, will review

17) and provide formal recommendations and feedback on

18) working papers, reports and other documents

19) related to the design and implementation of

20) Census Bureau programs and surveys, correct?

21) A Yes.)

22) Q Did the NAC review any of the memos that

1) the Census Bureau prepared regarding the  
2) citizenship question?

3) A Not that I know of.

4) Q Did you or anyone on your staff, to your  
5) knowledge, provide the NAC with copies of those?

6) A No. What this refers to is the items  
7) that are part of an agenda of a meeting. There  
8) was not an agenda of a meeting --

401/403

9) Q Okay.

10) A -- in that early 2018 time frame, so.

11) Q When were the meetings for the NAC?

12) A I think the NAC meeting was June, if I'm  
13) not mistaken.

14) Q And then there would be a second one?

15) A You know, late in December.

16) Q Did the NAC provide any formal  
17) recommendations or feedback on the citizenship  
18) question?

19) A I mean, they certainly have not read the  
20) recommendation, the -- or at least I don't recall  
21) reading the recommendation on this. They  
22) certainly verbally and have PowerPoint slides in

1 relationship to this, so.

2 Q Is there a process by which the  
3 Census Bureau formally reaches out to ask for the  
4 NAC's advice?

5 A So --

6 Q Is that what you described before?

7 A So -- so we have a group that's in charge  
8 of the -- the advisory committees. They meet with  
9 the chair and sometimes other parts of the  
10 committee to discuss upcoming meetings and ongoing  
11 response to recommendations, and so there's  
12 relatively regular communications between our  
13 staff and the committees.

401/403

14 Q And who is the group that's in charge of  
15 the NAC?

16 A So they're in our communications area,  
17 so.

18 Q Who is that?

19 A Tara Dunlop Jackson.

20 Q Anyone else?

21 A She's the person in charge.

22 Q And is that also for the CSAC?

1 A CSAC, yep. And the FESAC.

2 Q What is the FESAC?

3 A The Federal Economic Statistics Advisory  
4 Committee.

5 Q So can I have that one back?

6 (Plaintiffs' Exhibit 22, Email, was  
7 marked.)

401/403

8 BY MS. GOLDSTEIN:

9 Q Did you see the PowerPoint presentation  
10 that the NAC prepared that you referred to  
11 earlier?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: Are you referring to the  
14 one by Arturo Vargas?

15 BY MS. GOLDSTEIN:

16 Q Yes.

17 A Yes.

18 (Plaintiffs' Exhibit 23, Emails, was  
19 marked.)

20 BY MS. GOLDSTEIN:

21 Q I'm showing what has been marked as  
22 Plaintiffs' Exhibit 23. It is an email chain

1 Bates-stamped 8630, 8631. Do you recognize this  
2 document?

3 A I think so, yeah.

4 Q What is this?

5 A So I think we were referring back to  
6 their recommendations.

7 Q What were the NAC's recommendations with  
8 respect to the citizenship question?

9 A To not ask it. 401/403/802

10 Q After the NAC made the recommendation to  
11 not ask the citizenship question, what was the  
12 Census Bureau's next steps in response to that  
13 recommendation?

14 A I'm sure we're working on the response.  
15 Say, you know, decision's been made, as was  
16 communicated in the meeting.

17 Q Has that response gone out yet?

18 A No. I don't know.

19 Q Who would know?

20 A Tara.

21 Q So in this email, it states towards the  
22 very bottom on 8630 that, "The committee believes

1 the situation is so dire that it considers it a  
2 crisis and requires the immediate attention of the  
3 U.S. Secretary of Commerce and the Acting Deputy  
4 Secretary of Commerce."

5 Did the NAC ever have any direct  
6 communications or meetings with the U.S. Secretary  
7 of Commerce?

8 MS. BAILEY: Objection. Foundation.

9 (Thereupon, the court reporter  
10 clarified.)

11 THE WITNESS: So I don't believe that the  
12 NAC as a committee has.

13 BY MS. GOLDSTEIN: 401/403

14 Q Okay.

15 A It's my understanding that Arturo was one  
16 of the people that the Secretary spoke to.

17 Q Was there -- what was the result of this  
18 email?

19 A I don't know what you mean by that.

20 Q So you mentioned that Arturo Vargas met  
21 with Ross?

22 A Prior to the decision.

1 Q Prior to the decision.

2 Do you know how, if at all, the NAC's  
3 recommendation with respect to the citizenship  
4 question was taken into account by the Commerce  
5 Department?

6 MS. BAILEY: Objection. Form.

7 THE WITNESS: I don't know. I am pretty  
8 sure that Arturo and the Secretary spoke and  
9 Arturo had his opportunity to state his case to  
10 the Secretary. 401/403/802

11 BY MS. GOLDSTEIN:

12 Q And other than that one meeting that  
13 you've referred to, the NAC meeting, did the  
14 Census Bureau have any additional meetings about  
15 the citizenship question with NAC?

16 MS. BAILEY: Objection. Foundation.

17 THE WITNESS: No.

18 BY MS. GOLDSTEIN:

19 Q Other than the meeting that you've  
20 described with the NAC, did the Census Bureau have  
21 any meetings --

22 A I'm sorry.



1 Q Go ahead.

2 A I mean, so they're -- on other work,  
3 there are ongoing discussions with the NAC and a  
4 range of matters. The NAC has subcommittees that  
5 work with staff directly.

6 Q Uh-huh.

7 A You know, I'm sure in those meetings the  
8 topic came up.

9 Q What are those subcommittees where you  
10 think the topic came up?

11 A So I think there's -- you know, I can't  
12 remember the names of the subcommittees, but  
13 there's some that work on the ACS. I think one  
14 that's roughly on administrative records. So  
15 various sort of subtopics. CSAC has them, as  
16 well.

401/403

17 Q And what is the CSAC's role?

18 A Very similar. I'm sure if you go back  
19 and read the charter, it reads almost probably  
20 exactly the same.

21 (Plaintiffs' Exhibit 24, U.S. Department  
22 of Commerce Bureau of the Census Scientific

1) Advisory Committee Charter, was marked.)

2) BY MS. GOLDSTEIN:

3) Q I'm showing what has been marked as  
4) Plaintiff's Exhibit 24. It is the U.S. Census  
5) Scientific Advisory Committee Charter. Is this  
6) the CSAC charter?

7) A Yes.

8) Q And this charter also provides that it  
9) will provide formal review and feedback on  
10) internal and external working papers, reports and  
11) other documents related to the design and  
12) implementation of census programs and surveys?

13) A Yep. 401/403

14) Q Did the CSAC provide any formal review of  
15) the memos relating to the citizenship question?

16) A No.

17) Q Did the CSAC provide any feedback on any  
18) of the memos relating to the citizenship question?

19) A No.

20) Q Why not?

21) A Again, it was not part of an organized  
22) agenda in the meeting where they were -- where

1 those -- this was something that happened in the  
2 compressed time frame, and we didn't have the  
3 normal period through which we could have these  
4 sorts of engagements.

5 Q Is it fair to say in the normal course,  
6 when a change is proposed to the decennial census,  
7 it's on a longer time frame?

8 MS. BAILEY: Objection. Speculation.

9 THE WITNESS: I mean --

10 BY MS. GOLDSTEIN:

401/403

11 Q For example, the --

12 A No.

13 Q -- race and ethnicity proposed changes?

14 A Yes. It was on a longer time schedule  
15 that allowed more feedback from the advisory  
16 committees.

17 Q And typically, in the ordinary course,  
18 when there is a proposed change to a question,  
19 that proposed change is raised to the advisory  
20 committees, correct?

21 A If it's significant.

22 Q So, typically, in the ordinary course,

1 where there is a proposed significant change to  
2 the census questionnaire, that proposed change is  
3 raised to the advisory committees, correct?

4 A Yes.

5 Q Including the NAC?

6 A Yes.

7 Q And including the CSAC?

8 A Correct.

9 Q But that did not happen with the  
10 citizenship question, correct?

401/403

11 A It did not.

12 Q Because there wasn't time?

13 A Because there wasn't time.

14 Q Were there any other reasons why the  
15 citizenship question was not raised to the  
16 advisory committee?

17 MS. BAILEY: Objection, speculation.

18 THE WITNESS: No.

19 That timing was the primary issue, yeah.

20 BY MS. GOLDSTEIN:

21 Q Were there any --

22 A No.

1 Q -- other issues?

2 A Not that I know of.

3 Q Okay. Did CSAC, which is the  
4 Census Scientific Advisory Committee, right?

5 A Yes.

6 Q Provide any feedback on the citizenship  
7 question?

8 A Yes, they did.

9 Q What was their feedback on the  
10 citizenship question?

11 A So they had a short presentation about it  
12 at the spring CSAC meeting where they argued  
13 against it.

401/403/802

14 Q For what reasons?

15 A For many of the normal reasons, the short  
16 time frame. They were concerned about it not  
17 being tested.

18 Q Has the Census Bureau responded to CSAC's  
19 recommendation yet?

20 A I think we have, but I'm not sure. I'd  
21 have to see if that's gone out or not.

22 Q Who would know?

1 I'd like to follow up on something you  
2 said earlier. I believe your testimony was that  
3 it's difficult to simulate the decennial census  
4 because it's unique. Is that a fair  
5 characterization?

6 A Correct.

7 Q Okay. But, in fact, that the  
8 Census Bureau does the multiyear testing program  
9 to prepare for the census; is that correct?

10 A That's correct.

11 Q Do you know when that testing process  
12 started?

401/403

13 A 2013.

14 Q So seven years in advance of the  
15 decennial census, correct?

16 A Correct.

17 Q And from that testing, the Census Bureau  
18 determines -- obtains various pieces of  
19 information that are useful for development of the  
20 2020 census?

21 A Correct.

22 Q For example, self-response rates?

1 A That's one thing that --

2 Q Okay.

3 A So a testing self-response rate is not  
4 that indicative of a census self-response rate  
5 because of the lack of advertising and --

6 Q But, in fact, you do do tests to  
7 determine self-response rates in preparation for  
8 the decennial census?

9 A I don't think we did any tests whose  
10 purpose it was to determine what the self-response  
11 rate was.

12 Q Do you also use these tests to determine  
13 or to obtain information about nonresponse  
14 follow-up procedures?

401/403

15 A About procedures, yes.

16 Q And about the use of administrative  
17 records?

18 A And about -- yes.

19 Q And about the use of data capture systems  
20 or the functionality of the those systems?

21 A Correct.

22 Q How about for language support

1 systems --

2 (Conference call interruption.)

3 THE WITNESS: Okay. All right. Please  
4 say the question again.

5 BY MR. TILAK:

401/403

6 Q And how about language support systems or  
7 translations services?

8 MS. BAILEY: Objection. Vague.

9 THE WITNESS: So there was some stuff  
10 done with language, yes.

11 BY MR. TILAK:

12 Q So in short, this multiyear testing  
13 program does provide meaningful information that  
14 the Census Bureau uses to prepare for the 2020  
15 census?

16 A Yes.

17 Q Did you do any tests where the sole  
18 purpose was not self-response rates but one of the  
19 items that was looked at was self-response rates?

20 MS. BAILEY: Objection. Form.

21 THE WITNESS: So we always look at the  
22 self-response rate as a matter of course.



1 BY MR. TILAK:

2 Q And would it be fair to say this  
3 multiyear testing program imposes a cost upon the  
4 Bureau?

5 A Absolutely.

6 Q And would it also be fair to say that  
7 none of these tests over the last seven --  
8 five years have included -- or included a  
9 citizenship question?

10 A Over the last --

11 Q Five years, since 2013 to 2018.

12 A No. None of the census tests included a  
13 citizenship question.

14 Q We have just touched on self-response.  
15 Briefly, self-response, could you provide a short  
16 definition for that?

17 A Self-response is when a survey is -- when  
18 we ask someone to do a survey, they, you know,  
19 fill it out either online, on paper, over the  
20 phone, and provide us their answers by themselves.

21 Q And where a households fail to  
22 self-respond to the census, there are other ways

1 that's not necessarily the rule.

2 Q It's not a prerequisite to be hired as a  
3 decennial census enumerator?

4 A Not if you're going to try to hire  
5 hundreds of thousands of people, it's not.

6 Q Earlier today you mentioned the concept  
7 of a hard-to-count population. What is a  
8 hard-to-count population?

9 A So there are certain subpopulations that  
10 are lower self-response rates. You know, recent  
11 immigrants, you know, people in poverty, you know,  
12 folks on tribal lands. 401/403

13 Q How about noncitizen?

14 MS. BAILEY: Objection. Vague.

15 THE WITNESS: Noncitizen, their recent  
16 immigrants would be included in that.

17 BY MR. TILAK:

18 Q How about households with limited English  
19 proficiency, are they considered --

20 A Yes.

21 Q -- considered a hard-to-count population?

22 A Yes.

1 Q In general, isn't it the case that more  
2 nonresponse follow-up is needed for hard-to-count  
3 populations compared to the population at large?

4 A Yes. 401/403

5 Q Now, for the 2020 census, what is the  
6 maximum number of times that an enumerator will  
7 visit a household that has not self-responded?

8 A I think, by design, six times.

9 Q And six is not the number at which the  
10 Census Bureau expects every household to have  
11 responded, correct?

12 MS. BAILEY: Objection. Vague.

13 THE WITNESS: So most households that  
14 respond to NRFU will respond before six visits.  
15 It's just some households are harder to get than  
16 others.

17 BY MR. TILAK:

18 Q Sir, so after six visits, some households  
19 may still not have responded?

20 A Correct. 401/403

21 Q And as compared to the U.S. population as  
22 a whole, is it more likely that hard-to-count

1 populations would still not be counted after those  
2 maximum of six visits?

3 MS. BAILEY: Objection. Form.

4 THE WITNESS: It is. Hard-to-count  
5 populations will have a higher proportion in the  
6 higher count of NRFU visits.

7 BY MR. TILAK:

8 Q And would they also have a higher  
9 proportion in the amount of people who have not  
10 been enumerated after the maximum of NRFU visits?

11 MS. BAILEY: Objection. Form.

12 THE WITNESS: That's actually more  
13 difficult to say.

14 BY MR. TILAK:

15 Q Are you aware of any studies assessing  
16 that question?

17 A I know that imputation rates are slightly  
18 higher, but it's hard to -- you know, the -- what  
19 happens at the end of NRFU is -- is -- you know,  
20 we seek proxy responses and that sort of thing, as  
21 well. So proxy rates are definitely higher  
22 for hard-to-count communities.

1 Q And are proxy rates -- are proxies sought  
2 for households that do not respond to nonresponse  
3 follow-up?

4 A Yes.

5 Q Are they sought in any other circumstance  
6 in the context of the decennial census?

7 A If we received a response, we wouldn't  
8 use a proxy response.

9 Q So the only time you would use a proxy  
10 response is if a household didn't respond in NRFU?

11 A Yes.

12 Q Now, the maximum of six visits, is that  
13 set, in part, based on budgetary and staffing  
14 considerations?

15 A Yes.

16 Q Because the census has a limited staff?

17 A Yes.

18 Q And limited budget?

19 A And a limited budget --

20 Q Budget?

21 A -- and a limited schedule.

22 Q And we just mentioned proxies. Who

1 qualifies as a proxy for a nonresponding  
2 household?

3 A I don't understand the --

4 Q Is it neighbors or landlords --

5 A So you're asking who could give a proxy  
6 response for --

7 Q Right.

8 A Typically, neighbors or other -- you  
9 know, neighbors, sometimes maybe a postal worker.  
10 You know, somebody with direct knowledge of the  
11 number of people living in that house.

12 Q How does the Census Bureau go about  
13 identifying who has this knowledge, minimum  
14 knowledge --

15 MS. BAILEY: Objection. Vague.

16 THE WITNESS: So there are procedures and  
17 NRFU training about what to do. And, you know,  
18 obviously, asking a neighbor is the key.

19 BY MR. TILAK:

20 Q For the 2020 census, is there a maximum  
21 number of proxy visits?

22 A So we try -- if we haven't found anybody

1 by four or five, we start looking for a proxy  
2 then.

3 Q Is there a point in which you stop  
4 looking for a proxy?

5 A So, you know, the design is to stop at  
6 six.

7 Q And it's possible that after six visits,  
8 you haven't gotten the response in nonresponse  
9 follow-up and you also haven't gotten the response  
10 in proxy; is that right?

11 A That is true, yes.

12 Q And is that the situation -- where you  
13 haven't gotten the response in nonresponse  
14 follow-up or proxy, is that a situation where you  
15 would apply imputation?

16 A Yes.

17 Q And I think you mentioned this earlier,  
18 but compared to the U.S. population generally, are  
19 proxy rates for hard-to-count populations higher?

20 A Yes.

21 Q Are administrative records another way  
22 that the Census Bureau can use to enumerate a

1 household that has not self-responded?

2 A Yes.

3 Q And to determine the number of people who  
4 live in a household, what administrative records  
5 does the Census Bureau look at?

6 A So a variety of administrative records.  
7 So, importantly, you know, income tax returns,  
8 other government administrative records from  
9 Social Security or -- or various, you know,  
10 assistance programs, SNAP or -- but also using  
11 other information like, you know, whether the mail  
12 is being delivered to the house at the current  
13 time and that sort of stuff.

14 It's actually a pretty small share of  
15 the -- you know, it's only like 4 percent of the  
16 households can be enumerated that way, where we  
17 have high -- high-quality records that are very  
18 stable over a period of time.

19 Q So the ability to use administrative  
20 records applies to a fairly small portion of the  
21 population; is that correct?

401/403

22 A Of the NRFU population, yes.



1 Q Of the NRFU population.

2 Compared to the U.S. population at large,  
3 is the -- can administrative records be used to  
4 enumerate hard-to-count populations at a smaller  
5 rate than the U.S. population at large?

6 MS. BAILEY: Objection. Form. 401/403

7 THE WITNESS: That is the case.

8 BY MR. TILAK:

9 Q Is whole person imputation a mechanism  
10 that the Census Bureau uses to enumerate  
11 households that have failed to self-respond?

12 A And failed -- non- -- didn't respond in  
13 nonresponse follow-up.

14 Q Does the Census Bureau try to obtain a  
15 proxy response before resorting to --

16 A Yes.

17 Q -- whole person imputation?

18 A Yes.

19 Q And briefly, what is whole person  
20 imputation? 401/403

21 A It's when the count in the house is  
22 imputed and their characteristics are imputed.

1 Q How is that done?

2 A Using neighborhood characteristics

3 and -- so --

401/403

4 Q Where does the Census -- sorry. Finish  
5 your answer.

6 A From the other people that have  
7 responded.

8 Q From what sources does the Census Bureau  
9 determine the neighborhood characteristics that it  
10 then uses to impute to the households?

11 A So from the ACS, from administrative  
12 records, but also, really important here, from the  
13 other responses to the Census.

14 Q Now, besides NRFU and proxy responses and  
15 administrative records and whole person  
16 imputations, are there any other methods that the  
17 Census Bureau can use to enumerate a household  
18 that fails to self-respond?

19 A That's pretty much it.

20 Q That's the whole list.

21 If there is a decline in the  
22 self-response for a subpopulation within the U.S.

1 population, is it your understanding that this  
2 will be associated with an increase in the net  
3 undercount of that population?

4 A That's not necessarily the case. It  
5 would be an increase in the NRFU workload for that  
6 population.

7 Q And so if there's a decline in  
8 self-response, then the NRFU workload would be  
9 increased, correct? 401/403

10 A Yes.

11 Q Are you aware of any studies that have  
12 analyzed the relationship between a decline in  
13 self-response in a particular subpopulation and  
14 the net undercount for that subpopulation?

15 A I'm not familiar with any. That doesn't  
16 mean they don't exist, so -- again, this is -- I'm  
17 an economist, not a demographer.

18 Q Do you know who would be the right person  
19 to ask about this at the Census Bureau?

20 A Karen Battle I would start with. Or I  
21 would add -- no. Karen is a good person.

22 Q And if there's a decline in the

1 self-response for a hard-to-count population,  
2 would that be associated with the net undercount  
3 for that hard-to-count population?

4 A Again, not necessarily. It means that we  
5 would have a higher NRFU workload for that  
6 population, and we may capture all of those folks  
7 being NRFU.

8 Q So the net undercount would be avoided if  
9 the NRFU procedures were as effective for that  
10 hard-to-count population as for the population at  
11 large; is that a fair statement?

12 A Or as is -- as good as they were for that  
13 subpopulation before.

14 Q Could you explain that?

15 A Well, you know, you're trying to  
16 enumerate this subpopulation, so if only the  
17 self-response is now at issue but NRFU is not an  
18 issue, you should be able to pick everybody else  
19 up with NRFU, so.

20 Q Now, you testified earlier about the  
21 memos that Dr. Abowd prepared on January 19th and  
22 March of 2018. Was it your testimony that you

1 A No.

2 Q So you would agree that the  
3 inclusion -- or the citizenship question could  
4 potentially be much more burdensome and would lead  
5 to a larger decline in self-response for  
6 noncitizen households?

7 A Correct.

8 Q And noncitizen households here are any  
9 households with at least one noncitizen?

10 A Correct.

11 Q And then if we could turn to Exhibit 16,  
12 which I believe is the March 2018 memo, starting  
13 Bates was 0009812, I believe.

14 A I don't have it.

15 Thank you. This is the questions. It's  
16 not the -- you're looking for the Secretary's  
17 memo?

18 Q Correct. Yes. I apologize for that  
19 confusion.

20 If I can direct you to Bates ending on  
21 15, the last full paragraph that starts, "how  
22 might inclusion."

1 A Uh-huh.

2 Q Halfway through that paragraph,  
3 "Inclusion of a citizenship question on the 2020  
4 census questionnaire is very likely to reduce the  
5 self-response rate pushing more households into  
6 NRFU."

7 Do you agree with that statement?

8 A Yes.

9 Q And then the last statement in that -- or  
10 the second to last sentence in that paragraph,  
11 "Those refusing to self-respond to the citizen  
12 question are particularly likely to refuse to  
13 respond in NRFU, as well, resulting in a proxy  
14 response."

15 A Uh-huh.

16 Q Do you agree with that statement?

17 A Yes.

18 Q So would it be fair to say between these  
19 two memos, that it is likely that a citizenship  
20 question will lead to a decline in self-response  
21 among noncitizen households?

22 A That's what the analysis predicted, yes.

1 Q And then these noncitizen households who  
2 did not respond because of the citizenship  
3 question were particularly likely to refuse to  
4 respond in NRFU, as well?

5 A Yes.

6 Q And that would result in a proxy  
7 response?

8 A Correct.

9 Q In evaluating the citizenship question,  
10 did anyone at the Bureau look at the efficacy of  
11 non-response follow-up procedures for noncitizen  
12 households in comparison to other segments of the  
13 population?

14 A Not in -- I don't think that was -- we  
15 have other things that look at efficacy of NRFU  
16 procedures. That was not done as part of this  
17 analysis.

18 Q Apart from this analysis, was any study  
19 of the efficacy of nonresponse follow-up  
20 procedures for noncitizen households compared to  
21 other parts of the population done at the  
22 Census Bureau?

1           A    So I'm not sure if there -- I'd have to  
2   go back and see if there was really a study that  
3   had that as its goal, but analyzing the -- you  
4   know, procedures and how well, you know, our  
5   instruments work and stuff like that was,  
6   obviously, a big part of the '18 test, so --

7           Q    But you're not aware of a study that  
8   focused specifically on looking at efficacy for  
9   the noncitizen --

10          A    No.

11          Q    -- households --

12          A    No.

13          Q    And you said that was tested in the  
14   end-to-end test?

15          A    NRFU procedures were, yes.

16          Q    And the end-to-end test did not contain  
17   the citizenship question, correct?

18          A    Correct.

19          Q    Did anyone at the Bureau evaluate the  
20   efficacy of nonresponse follow-up procedures for  
21   Hispanic households or households with limited  
22   English proficiency as compared to the general



1 U.S. population?

2 A So, again, you know, the answer there is  
3 the same. We do try to have in-language people as  
4 enumerators. So there's often an after-event  
5 analysis of how well that seems to work, so. 401/403

6 Q But you're not aware of any specific test  
7 that targeted that question?

8 A No, not -- not specifically.

9 Q How about -- did the Bureau evaluate the  
10 efficacy of nonresponse follow-up procedures based  
11 on census tract or based on state?

12 A On census or state?

13 Q Yes.

14 A I mean, obviously, we look at -- we look  
15 at things by the characteristics of different  
16 units of geography, but, you know, I'm not sure  
17 what you mean by -- what -- what specifically are  
18 you trying to get at here?

19 Q Are there any tests that look at whether  
20 certain census tracts are harder to enumerate  
21 through nonresponse follow-up procedures than  
22 other citizen tracts?

1           A     So, I mean, we already -- we already know  
2     that, to some degree, because we know that those  
3     tracts are made up of higher proportions of  
4     hard-to-count populations, so that's -- I don't  
5     know what the test is that you're looking for  
6     here.     So --

7           Q     And then you mentioned for these  
8     noncitizen households that are likely to not  
9     self-respond and then will refuse to answer in  
10    NRFU, that a proxy response would be required.    In  
11    evaluating the citizenship question, did the  
12    Bureau consider whether -- consider the  
13    availability of proxies -- let me rephrase.

14                   In evaluating the citizenship question,  
15    did anyone at the Bureau consider whether the  
16    availability of proxy was the same for noncitizen  
17    households as for other parts of the U.S.  
18    population?

19           A     Not that I know of.

20           Q     How about for Hispanic households or  
21    households with limited English proficiencies?

22           A     Yeah.    I don't think we've broken

1 that -- I mean, neighbors are neighbors, so.

2 Q And has the Bureau done any analysis of  
3 the availability of proxies that's broken down by  
4 census tract or by state?

401/403

5 A No.

6 Q Has any analysis been done by the Bureau  
7 on the willingness of proxies to respond for  
8 noncitizen households versus the U.S. population  
9 at large?

10 A Not that I know of.

11 Q The same question with respect to proxies  
12 for Hispanic households or households with limited  
13 English proficiency.

14 A No.

15 Q If proxies were less available for  
16 noncitizen households, then fewer of these  
17 noncitizen households that did not respond to NRFU  
18 would be enumerated through proxies, correct?

19 MS. BAILEY: Objection. Calls for  
20 speculation.

21 THE WITNESS: Presumably.

22 BY MR. TILAK:

1 Q We already briefly discussed  
2 administrative records. In evaluating the  
3 citizenship question, did anyone at the Bureau  
4 consider the differential quality or availability  
5 of administrative records for noncitizen  
6 households as compared to the U.S. population?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: Yeah. That was analyzed in  
9 2010.

401/403

10 BY MR. TILAK:

11 Q What test was that analyzed in?

12 A I believe it was called the census 2010  
13 match study.

14 Q What was the impetus for that test?

15 A It was one of the regular tests we ran as  
16 part of the 2010 program.

17 Q Briefly, what were the findings of that  
18 study?

19 A So the study basically documented how  
20 well we could match census responses, including  
21 NRFU and proxy responses, to administrative  
22 records.

1 Q And did that study also look at the  
2 availability of administrative records for  
3 Hispanic households --

4 A That --

5 Q -- and households of --

6 A That --

7 Q -- limited English --

8 A That would --

9 Q -- proficiency?

10 A -- so it was able to demonstrate that  
11 hard-to-count populations had lower-quality  
12 administrative records.

13 (Thereupon, reporter requested to speak  
14 one at a time.)

15 BY MR. TILAK:

16 Q And when you say lower-quality  
17 administrative records, that means that the  
18 administrative records could be used to enumerate  
19 those households less of the time?

20 A Correct.

21 Q Now, with respect to whole person  
22 imputation, in evaluating the citizenship

1 question, did anyone evaluate whether whole person  
2 imputation was less accurate for households with  
3 noncitizen as opposed to the population at large?

4 A I'm not sure that that -- that's been  
5 done. I imagine it probably would be, but I don't  
6 know what study that is.

7 Q You haven't seen any study that looks at  
8 this question? 401/403

9 A I don't recall seeing it, no.

10 Q Has anyone evaluated the accuracy of  
11 whole person imputation for Hispanic or households  
12 with limited English proficiency compared to the  
13 population at --

14 A Same.

15 Q -- large?

16 A Same.

17 My guess is there's a study out there,  
18 I'm just not familiar with it.

19 Q Was any such study, to your knowledge,  
20 part of the review of the citizen question in  
21 preparation for the decennial --

22 A No.

1 Q -- census?

2 Did anyone evaluate the accuracy of whole  
3 person imputation based on census tract or state?

4 A I -- I don't know, but that would have  
5 been done, probably, in a post-enumeration survey  
6 type thing. Would not have been able to evaluate  
7 it by state, so. 401/403

8 Q And by post-enumeration survey, what do  
9 you mean by that?

10 A So that's something we do afterwards to  
11 assess the quality of the census.

12 Q So the last time that that would have  
13 been done would have been after the 2010 census?

14 A 2010, yes.

15 Q Do you know if any such survey was used  
16 in preparations for this 2020 census?

17 A So you can only do a post-enumeration  
18 survey after you do a census. So we did use those  
19 results to inform our plans and procedures for  
20 2020.

21 Q Are you aware of any specific calculation  
22 of the additional costs that would be incurred to

1 make up for a decline in self-response or failure  
2 to not -- failure to answer a NRFU as a result of  
3 this citizenship question?

4 MS. BAILEY: Objection. Compound.

5 THE WITNESS: So I believe in the -- in  
6 the -- not this memo -- well, it probably is in  
7 this memo, too -- but there was a computation of  
8 what the expected increase in nonresponse  
9 follow-up costs would be.

401/403

10 BY MR. TILAK:

11 Q Do you remember what the calculation was?

12 A Offhand, I think it was in the, you know,  
13 20 to \$40 million range, something like that.

14 Q Was that a conservative estimate?

15 A A conservative -- yeah. I think they  
16 thought it -- that that was potentially a lower  
17 bound.

18 Q Are you aware of any calculation at the  
19 upper bound of what the cost might be?

20 A Not of an upper bound, no.

21 Q Earlier today we discussed sensitive  
22 questions. Is it accurate that if a question is



1 sensitive to a particular population, that  
2 population might fail to respond to that  
3 particular question? 401/403

4 MS. BAILEY: Objection. Calls for  
5 speculation.

6 THE WITNESS: So to the degree that  
7 sensitive questions have lower self-response  
8 rates, that could potentially be true, yeah.

9 BY MR. TILAK:

10 Q And if there's a sensitive question on a  
11 questionnaire, does the presence of that question  
12 increase the likelihood that a person will not  
13 respond to the questionnaire as a whole?

14 A Again, that -- that could happen, yes.

15 Q We -- you also talked about cognitive  
16 testing at some length this morning. What does it  
17 mean for a question to be cognitively difficult?

18 A So the person doesn't understand what  
19 we're asking.

20 Q And if a question is cognitively  
21 difficult, does that increase the likelihood that  
22 the respondent will fail to answer that specific

1 question on the questionnaire?

2 A Yes.

3 Q Does it also increase the likelihood that  
4 the respondent will fail to respond to the  
5 questionnaire as a whole?

6 A That, I -- I -- I'd have to see studies  
7 on that. As surveys go, census questions are  
8 typically not that cognitively difficult. Health  
9 surveys are far more cognitively difficult, just  
10 to give you a -- some parameters.

11 Q Is there -- is there a threshold in your  
12 mind for when a question is cognitively difficult?

13 A Not in my mind. I would leave that up to  
14 the folks that would evaluate that sort of thing.

15 Q And who would those people be?

16 A So we have some survey methodologies that  
17 look at that type of thing, as do other survey  
18 organizations.

19 Q For the 2020 census, the citizenship  
20 question will be placed at the end, correct?

21 A Correct.

401/403

22 Q What was the reason for that?

1           A    Since it was added late, it was placed at  
2   the end.

3           Q    That particular ordering was not tested  
4   in any way, correct?

401/403

5           A    No, it wasn't.

6           Q    But households are still required to  
7   answer the citizenship question, correct?

8           A    Yes, they are.

9           Q    Even though it's placed at the end?

10          A    Yes.

11          Q    The Census Bureau has not communicated to  
12   the public that the citizenship question is  
13   optional, to your knowledge?

14          A    No.

15          Q    Do you know if DOJ has communicated to  
16   the public whether the citizenship question is  
17   optional?

18               MS. BAILEY:  Objection.  Foundation.

19               THE WITNESS:  Well, the Census Bureau's  
20   position is that it is not, so.

21   BY MR. TILAK:

22          Q    In fact, a person faces penalty for

1 questionnaires must satisfy some statutory or  
2 regulatory need; is that correct?

3 A Correct.

4 Q And generally, the Census Bureau only  
5 asks questions that are requested by an agency,  
6 correct?

7 A Yes. That's correct.

8 Q And the impetus for adding the  
9 citizenship question here was the DOJ's Gary  
10 letter --

11 A Yes.

12 Q -- correct?

13 And this letter asked for block-level  
14 citizenship data, correct?

15 A Correct.

16 Q And the Census Bureau decided to use the  
17 ACS question, correct?

18 A That's correct.

19 Q When in the process did the Census Bureau  
20 decide that if they were going to ask a  
21 citizenship question, it would be the ACS  
22 question?

1           A    Early in the process. Given the tight  
2   time constraint, we didn't really have time to  
3   consider an alternative, and this has the added  
4   benefit that it's completely comparable with the  
5   ACS data.

6           Q    The ACS question asks for more than just  
7   citizenship, though, correct?

8           A    It has multiple questions. 401/403

9           Q    It asks whether someone was born in the  
10   United States or U.S. territories?

11          A    Correct.

12          Q    Did DOJ ask for data on where a person  
13   was born?

14          A    They did not.

15          Q    To your knowledge, was this information  
16   necessary to satisfy DOJ's needs?

17               MS. BAILEY: Objection. Foundation.

18               THE WITNESS: Which information?

19   BY MR. TILAK:

20          Q    The information on whether someone was  
21   born, for example, in the U.S. territories?

22          A    I don't think that -- that -- I'm not

1) sure what you're asking here.)

2) Q Well, the DOJ asked for citizenship  
3) information?

4) A Right.)

5) Q Is information on where someone was born  
6) responsive to that request apart from the earlier  
7) question, are you a citizenship or not?

8) A No. So, I mean, that's the way the ACS  
9) question is read, so that's what we went with, so.)

10) Q The ACS question also requests whether  
11) individuals were born abroad to U.S. citizens?

12) A Correct. 401/403

13) Q DOJ did not specifically ask for that  
14) information, correct?

15) A No. They did not.)

16) Q The ACS question asks if a citizen is  
17) naturalized, correct?

18) A Correct.)

19) Q And, again, that was not specifically  
20) requested by DOJ?

21) A No.)

22) Q It also asks the year someone was

1 naturalized, if they were a naturalized citizen?

2 A Yes.

3 Q And DOJ doesn't ask for this information  
4 either, correct?

401/403

5 A No, it does not.

6 Q At any point, did the Census Bureau ever  
7 consider a question that simply asked, are you a  
8 citizen; yes or no?

9 A Again, that would have required a much  
10 lengthier period of time. It would have required  
11 testing and what have you. And so given the time  
12 frame and the desire to have comparability to the  
13 ACS, a decision was made to go with the ACS.

14 Q So is it a fair statement that because of  
15 the compressed timeline, the Census Bureau went  
16 with a question that asks for extraneous  
17 information not responsive to the DOJ's request?

18 MS. BAILEY: Objection.

19 THE WITNESS: That information is  
20 currently used by -- by DOJ right now. I would  
21 assume that, you know, they would still find that  
22 useful.

1 BY MR. TILAK:

2 Q Did they specifically request it --

3 A They did not.

4 Q Now, we talked a little bit about some of  
5 the evidence that Dr. Abowd cites in his memos for  
6 why there might be a decline in self-response  
7 rates. 401/403

8 Was there any affirmative evidence you're  
9 aware of suggesting that there would not be a  
10 decrease in response rates as a result of this  
11 citizenship question?

12 A No.

13 Q To go back for a second, when the  
14 decision was made to use the ACS formulation, who  
15 made that decision?

16 A That was a conversation within the  
17 Census Bureau.

18 Q Was the Commerce Department involved in  
19 any way?

20 A No.

21 Q Do you know if DOJ was involved in any  
22 way?



1 Q And how are they different?

2 A Well, they're meant to test procedures  
3 and processes and --

4 Q If the Census Bureau had known about the  
5 citizenship question request in February of 2017,  
6 would it have been able to do more testing of that  
7 question?

8 A We certainly would have had more time to  
9 do testing. Whether it would have been as  
10 definitive as we would have liked, I doubt it. It  
11 still would not have been in the decennial  
12 environment of, you know, this spring, summer of  
13 2020.

14 Q Would it have been -- let me rephrase.

15 If the citizenship question had been  
16 requested in February of 2017, would the  
17 Census Bureau have been able to include it in the  
18 2018 end-to-end test?

19 MS. BAILEY: Objection. Calls for  
20 speculation.

21 THE WITNESS: So if a decision had been  
22 made prior to the development of the materials for

1 the 2018 end-to-end test, we would have included  
2 it because it was part of the census. We ran what  
3 we thought was the census. Again, we weren't  
4 testing the questions in the 2018 end-to-end test.  
5 We were testing the systems and procedures.

6 BY MR. TILAK:

7 Q And what systems and procedures,  
8 specifically?

9 A All of the data collection procedures,  
10 all of the data processing procedures, the review  
11 and publication of the date products.

12 Q Did that include nonresponse follow-up  
13 procedures?

14 A It did.

15 Q And did it include proxy response  
16 procedures?

17 A It did.

18 Q And whole person imputation procedures?

19 A It will.

20 Q And based on Dr. Abowd's analysis, is it  
21 accurate that the inclusion of a citizenship  
22 question will increase the NRFU workload?

1           A    That's -- we believe that to be the case,  
2   yes.

3           Q    And is it also an accurate statement  
4   because people who chose to -- who refuse to  
5   respond -- self-respond because of a citizenship  
6   question will also not respond to NRFU and the  
7   proxy workload will also be increased --

8           MS. BAILEY:  Objection.

9   BY MR. TILAK:

10          Q    -- in the 2020 census?

11          A    So we do believe it will lead to an  
12   increase in the proxy rate.  Less confident about  
13   that rate, though, because it's a smaller rate.

14          Q    What do you mean by that?

15          A    Well, the number of proxy responses at  
16   the end is relatively small compared to the NRFU  
17   workload.

18          Q    And of that proportion that's left over  
19   for proxy are hard-to-count populations a  
20   disproportionate part of the proxy response  
21   population as it --

22          A    Yeah.  That's part of what it means to be

1 hard to count, I believe.

2 Q Turning to 1317 on this memo, the last  
3 sentence -- well, let's start with the sentence  
4 above that. "No one provided evidence that there  
5 are residents who would respond accurately to a  
6 decennial census that did not contain a citizen,  
7 but would not respond if it did, although many  
8 believe that such residents had to exist."

9 Does the Census Bureau have any evidence  
10 responsive to this question here?

11 A So I think the Census Bureau's analysis  
12 suggested that there would be some folks who would  
13 have answered the question through  
14 self-response -- or responded via self-response  
15 that would now have to go to NRFU. Accuracy of  
16 NRFU responses is less than self-response and  
17 proxy response is less than NRFU responses.

18 Q So this is -- it's your testimony that  
19 this is not an accurate statement, that the  
20 Census Bureau did, in fact, provide evidence?

21 A So this is the Secretary's assessment of  
22 the evidence that was provided to him total, so.

1           Q    But your testimony is the Census Bureau  
2   did provide evidence; is that correct?

3           A    Yes.

4           MR. TILAK:   We can go off the record for  
5   five minutes.

6           MS. BAILEY:   Oh.   Taking a break?

7           MR. TILAK:   Yeah.

8           VIDEOGRAPHER:   The time is 3:44 p.m.  
9   This completes Media Unit Number 3.   We are now  
10   off the record.

11           (Off the record.)

12           VIDEOGRAPHER:   The time is 3:56 p.m.  
13   This begins Media Unit Number 4.   We're now on the  
14   record.

15           Please proceed, Counsel.

16           EXAMINATION BY MS. SHAH:

17           Q    Good afternoon.   My name is Niyati Shah,  
18   and I represent the plaintiffs in Lupe v. Ross in  
19   the District of Maryland, Case Number 8:1801570.

20           Dr. Jarmin -- of course.

21           I'd like to actually just go back to the  
22   discussion we had earlier today about the race and

1 ethnicity question.

2 Would you characterize combining the two  
3 census questions on race and ethnic origin for the  
4 2020 census as modifying the 2020 census  
5 questionnaire, as compared to 2020 census, or  
6 adding a new question to the 2020 census?

7 MS. BAILEY: Objection. Compound.

8 THE WITNESS: As modifying.

9 BY MR. SHAH:

10 Q Okay. Is it your understanding that the  
11 Census Bureau fielded a National Content Test or  
12 the NCT in 2015 in large part to evaluate the best  
13 way to collect race and ethnicity data for the  
14 2020 census?

15 A Yes.

16 Q And that included the possibility of a  
17 combined race and ethnicity question, correct?

18 A It did.

19 Q Among other things, did the NCT test for  
20 the wording of a combined race and ethnicity, as  
21 well as revised wording for a separate race and  
22 ethnicity question?

1 A I --

2 MS. BAILEY: Objection. Compound.

3 THE WITNESS: I believe it did both.

4 BY MS. SHAH: 401/403

5 Q And did the NCT test for a design and  
6 placement of the combined race and ethnicity  
7 question?

8 A I'm not sure if it did placement or not.

9 Q And did the NCT test for instructions for  
10 each iteration of the race and ethnicity question?

11 A Yes.

12 Q And as well for the questionnaire, as  
13 well?

14 A I'm not sure for the -- entire  
15 question -- I mean, I know for each of the  
16 versions of the question, it had different  
17 versions of the instructions.

18 Q And would you characterize the NCT as a  
19 randomized controlled test?

20 A It was.

21 Q And would the NCT also be considered  
22 field testing?

1           A     Yes.

2           Q     And from the NCT, would the Census Bureau  
3     be able to tell how certain demographic subgroups  
4     responded to the race and ethnicity question?

5           A     Yes.

401/403

6           Q     Would they be able to tell how Hispanics  
7     responded?

8           A     Yes.

9           Q     How about Asians?

10          A     Yes.

11          Q     What about Native Americans?

12          A     I believe so, yes.

13          Q     And would they also be able to show how  
14     populations in certain geographic regions  
15     responded?

16          A     I'm not sure about geographic regions, so  
17     I'd have to go back and review the -- it was a  
18     large test, because it needed to be able to  
19     breakdown by these various race and ethnic  
20     categories. But, obviously, some of those get  
21     pretty small if you break it into smaller  
22     geographies. So I'm not sure that it had much to



1 say geographically, but I'd have to go back and  
2 review the parameters of the test to answer that  
3 more fully.

4 Q Okay. Fair enough.

5 And it's correct that the Census Bureau  
6 staff recommended that the 2020 census include a  
7 combined race and ethnicity question with a new  
8 MENA category and check boxes for collection of  
9 racial subgroup data pending a parallel effort at  
10 OMB to revise the official standards?

11 A Yes.

401/403

12 Q After the Census Bureau staff made this  
13 recommendation to the Census director, they  
14 initially planned to include this race and  
15 ethnicity question in the 2018 end-to-end test in  
16 Rhode Island, correct?

17 A That is correct.

18 Q And if that combined race and ethnicity  
19 question stayed in the testing -- the end-to-end  
20 testing, would that represent a redesign of the  
21 questionnaire for 2020 census?

22 A So --

1 Q Would it have -- I asked if it would have  
2 informed the Census Bureau's development of the  
3 data collection instruments for the nonresponse  
4 follow-up?

5 MS. BAILEY: Same objection.

6 THE WITNESS: So I'm not sure how it  
7 would have informed. The other forms, when you  
8 asked if it was going to be on there --

9 BY MS. SHAH:

10 Q Yeah.

11 A -- the answer was yes, so.

12 Q Okay. And would -- would the results of  
13 the end-to-end test, if the race and ethnicity  
14 question was -- remained in there as recommended  
15 by the staff, would it have informed the  
16 development of training modules for enumerators?

17 MS. BAILEY: Objection. Calls for  
18 speculation.

401/403

19 THE WITNESS: So part of the end-to-end  
20 test is to review procedures. So regardless of  
21 what form of various questions are on there, it's  
22 going to inform refinements to training

1) procedures.

2 BY MS. SHAH:

3 Q Okay. Just, generally speaking, how  
4 would the Census Bureau go about estimating costs  
5 for a nonresponse follow-up program?

6 A So a lot of it is based on past practice.  
7 So we know, approximately, what the workload's  
8 going to be. We know what we're going to pay our  
9 enumerators, sort of a -- there's a rough formula  
10 that they use to estimate these things, based  
11 on -- you know, historical practice of NRFU and  
12 other things we've learned from the ACS and what  
13 have you.

14 Q Anything else?

15 A No.

16 Q Would a scientifically-rigorous  
17 calculation of these costs include basing  
18 estimates on iterative field testing and other  
19 research conducted over the years in the census  
20 planning phase?

21 MS. BAILEY: Objection. Compound.

22 Objection. Form.

401/403

1 THE WITNESS: So we try to update the  
2 cost models as best we can with relevant  
3 information. If some of that was gleaned from  
4 mid-decade tests, we would have added that in  
5 there.

401/403

6 BY MS. SHAH:

7 Q Okay. And would the final calculation or  
8 estimate also factor in results from the  
9 end-to-end test?

10 A So, yes. It may. So, I mean, we have  
11 changed procedures that affect the productivity of  
12 the enumerators, which is a large cost driver, so  
13 that will be incorporated into updated models.

14 Q But cal- -- so would calculations be  
15 based solely on the self-response rate from the  
16 previous census or ACS?

17 A No. So it's based on the self-response  
18 rate. It's based on the productivity of the  
19 enumerators in the field, based on wages and what  
20 have you. So, you know, those are the three main  
21 cost drivers. What's the workload? What's  
22 productivity? What's the cost per hour of

1           A     So this was a team put together that  
2     consisted of both Census and Commerce Department  
3     officials at the direction of the Secretary. So  
4     shortly after he came on board, there was some --  
5     some cost overruns on various things, and this was  
6     an attempt to get a broad handle on things.

7           Q     And the -- did this assumption of a  
8     3 percent increase factor in the addition of a  
9     citizenship question?           401/403

10          A     No.

11          Q     Okay. I'd like to mark the next document  
12     as Exhibit 25, I believe.

13                 (Plaintiffs' Exhibit 25, Memorandum, was  
14     marked.)

15     BY MS. SHAH:

16          Q     So are you familiar with this memo?

17          A     I am, yes.

18          Q     What is this memo about?

19          A     This was some work that was being done  
20     looking at, you know, sort of various response  
21     propensity type things for the ACS, I believe.

22          Q     What do you mean by various response

1 Q Where enumerators are --

2 A Temporary.

3 Q And are they trained differently, field  
4 representatives?

5 A Well, field representatives are trained  
6 to do the surveys that they conduct. So they go  
7 out in the field and do far more complex surveys  
8 than the decennial. So they're trained for each  
9 of surveys that they do. So they do the current  
10 population surveys, the SIPP, the ACS, the  
11 American Housing -- you know, there's a long list  
12 of surveys that they do that are either  
13 Census Bureau surveys or surveys we do on a  
14 reimbursable basis for government agencies.

15 Q So is it fair to say field  
16 representatives have more training than  
17 enumerators?

401/403

18 A They would certainly have more experience  
19 and training.

20 Q And then on Page 2, field representatives  
21 have asked for additional training to help them  
22 overcome these fears regarding confidentiality and

1 So there's a lot of stuff in here that doesn't  
2 refer to the technical characteristics that Census  
3 did not opine on.

4 BY MS. SHAH:

5 Q And from the technical perspective, was  
6 there anything that they opined on?

7 MS. BAILEY: Objection. Vague.

8 THE WITNESS: No. I think we took what  
9 we -- what we perceived from this letter as the  
10 technical requirements from DOJ for block-level  
11 data and tried to come up with a solution for that  
12 problem.

13 BY MS. SHAH:

14 Q And did you discuss this letter with any  
15 knowledge of jurisdictions actually going about  
16 drawing districts?

17 A No, not really. I mean, we have people  
18 in our redistricting office that had some input on  
19 this. But they provide the data. They're not  
20 involved in redrawing districts.

21 Q Did you discuss this letter with anyone  
22 who had knowledge or experience with litigating

1 Section 2, voting rights cases?

401/403

2 A No.

3 Q And what was your understanding of why  
4 DOJ needs to have this citizenship question asked  
5 on the short form?

6 A So they needed more geographically  
7 granular data. So right now, the no PL94 data at  
8 the block level, these data for the five-year ACS  
9 are at the block group level, and they have to  
10 model them down to the block level. They just  
11 wanted the data at the same level of geographic  
12 specificity that would be more accurate data.

13 Q Okay. If you look at the bottom of  
14 Page 2, the General Counsel sets out a bulleted --  
15 bulleted reasons why he believes the ACS does not  
16 yield annual data for enforcing the Voting Rights  
17 Act. The first bullet contends jurisdictions  
18 conducting redistricting use -- redistricting use  
19 total population data from Census to determine  
20 compliance with the Constitution's one-person,  
21 one-vote requirement. What is your understanding  
22 of that requirement?



1 on what we're going to do. So --

2 Q And what would be the purposes of talking  
3 points in this context?

4 A So to be able to have a clear message  
5 about, you know, how we were responding with the  
6 citizenship -- the process that we were following  
7 on the citizenship question.

8 Q And if I can turn your attention back to  
9 the draft, which is marked as Exhibit 28, do you  
10 recall if that letter and the content in that  
11 letter seemed to you to be an appropriate basis  
12 for creating talking points to address questions  
13 about the citizenship question?

401/403

14 A Yeah. And it wasn't about the  
15 citizenship question. It was about what we were  
16 doing in response to the question. So --

17 Q And -- and to clarify, what you were  
18 doing in response to DOJ's inquiry about --

19 A Right.

20 Q -- adding a citizenship question?

21 A Right.

22 So this seems to be a consistent -- so I

1 don't remember if this is exactly what we agreed  
2 to, but -- 401/403

3 Q And the middle of this letter, it goes  
4 through five steps, correct?

5 A Uh-huh.

6 Q And those five steps are summarized in  
7 numerous documents that we've looked at today --

8 A Right.

9 Q -- for your deposition?

10 A Yes.

11 Q Is this a standard process that the  
12 Census Bureau uses for adding questions to the ACS  
13 and then also to the decennial census?

14 A Correct. 401/403

15 Q Okay. I want to mark this as Exhibit 30?  
16 (Plaintiffs' Exhibit 30, Letter, was  
17 marked.)

18 BY MS. BRANNON:

19 Q Are you familiar with this document?

20 A I'm not sure if I've seen this or not,  
21 but I think I've seen other letters like this,  
22 though.

1 Q Would you typically approve a letter like  
2 this?

3 A I mean, especially if it's a form and we  
4 were discussing it in, you know, sort of the  
5 correspondence group, I probably would have seen  
6 it.

7 Q Would your log show whether you approved  
8 this letter or not?

9 A I'm not sure that it would show that I  
10 approved it or not.

11 Q Would it show whether you received a  
12 letter that was dated January -- January 31, 2018?

13 A So it -- it would show if I received a  
14 letter, yes.

15 Q Would it show if you received a draft of  
16 a letter that was to go out on January 31, 2018  
17 from Secretary Ross?

18 A That, I'm not sure.

19 Q This letter is markedly different than  
20 what we have marked as Exhibit 28, correct?

21 A Correct.

401/403

22 Q And none of the five steps are

1 removed -- or all of the five steps were removed,  
2 none of those are in the January 31, 2018 letter?

3 A That's correct. 401/403

4 Q Do you remember any discussions with  
5 anyone at Commerce about the changes of this  
6 letter to the draft of the version that Secretary  
7 Ross sent out?

8 A I don't -- not offhand, no.

9 Q Would you have had any conversations with  
10 Karen Dunn Kelley about this letter?

11 A I don't know.

12 Q I'm going to turn your attention to what  
13 I'm going to mark as Exhibit 31.

14 (Plaintiffs' Exhibit 31, Email, was  
15 marked.)

16 BY MS. BRANNON:

17 Q Are you familiar with this document?

18 A This sounds like KDK responding to my  
19 original email that we discussed earlier.

20 Q And she says, "Gentlemen, can you please  
21 sort through the issues below?" 401/403/802

22 Do you know what she meant by that?

1           A    I think we were trying to track down the  
2   changes, yeah.

3           Q    And when you say track down the changes,  
4   these were changes that were made by somebody at  
5   the Commerce Department?                   401/403

6           A    I think so, yeah.

7           Q    And that would have been at some point  
8   before January 24, 2018?

9           A    The changes?

10          Q    Yes.

11          A    Yeah.   I assume so, yeah.

12          Q    And do you have any recollection as to  
13   whether you received those changes?

14          A    So I don't recall, per se.

15          Q    Do you remember having any conversations  
16   with anyone about -- at Commerce about the content  
17   of the letters that Secretary Ross was sending to  
18   members of Congress in response to inquiries about  
19   the citizenship question?

20          A    No.   I mean, again, this was -- you know,  
21   there was lots going on.   This was not a -- you  
22   know, a key focus point.   We were trying to

1 A I think this looks familiar.

2 Q I'm going to direct your attention to the  
3 email from Burton Reist on January 24, 2018, which  
4 I acknowledge you were not cc'd on, but I just  
5 have a question for you, if you know. In the  
6 middle of the email that's at the bottom of  
7 Page 8558, it says, "We pulled the residence  
8 criteria topics from the PMR."

9 What is the PMR?

10 A Program management review. We do one  
11 quarterly for the decennial census.

12 Q Was there a program management review  
13 done in January of 2018?

14 A I have to go back and look, but there  
15 probably would have been one in there -- at some  
16 point.

401/403

17 Q Okay. And then if you'll turn the page  
18 over to 8559 it says, "We also haven't heard  
19 anything about the response to the  
20 senator" -- "about the response to Senator Harris  
21 on the citizenship question. That response is to  
22 inform the talking points we use on this issue for

1 the PMR."

2 A Correct.

3 Q And that's the performance management  
4 review?

5 A Program management review. 401/403

6 Q Program management review.

7 A Right. And we're only two days out from  
8 the PMR, so there you go.

9 Q Right. Okay. So we're only two days  
10 out, so there was one coming?

11 A So there's some urgency that we were  
12 going to be expected to say something about this.

13 Q Right. Are you involved in the drafting  
14 materials for the PMR?

15 A No, we're not directly.

16 Q Not directly.

17 A No.

18 Q Do you have any awareness of whether the  
19 materials drafted for the PMR that was done two  
20 days after this email was sent relied on that  
21 draft email -- that draft letter from  
22 Senator Harris?

1 Q In the middle, the second thing down says  
2 testing, correct?

3 A Uh-huh.

4 Q Let me go back. This looks similar to  
5 the five points that were outlined in that draft  
6 letter to Senator Harris, correct?

7 A Correct. 401/403

8 Q So it doesn't appear that there were any  
9 changes that were made between the time that email  
10 took place on the 24th and when this presentation  
11 was done?

12 A That's correct.

13 Q So then I'm going to direct your  
14 attention to the testing, which is the second  
15 point down on Page 23.

16 A Right.

17 Q And it says, "Question performance is  
18 evaluated in a field test."

19 A Uh-huh.

20 Q What do you mean -- what is meant by  
21 question performance?

22 A So, again, there's sort of the cognitive



1           A    I don't understand the -- so we've jumped  
2   to NRFU here?

3           Q    Yes.

4           A    So are you talking about NRFU generally  
5   or are you --

6           Q    Yes.   When you're doing field testing,  
7   are you looking for things like the efficacy of  
8   nonresponse follow-up?

9           A    So I don't know what you mean by  
10   efficacy, per se.   But certainly in the, like,  
11   2018 end-to-end field test --

12          Q    Yes.

13          A    -- we tested our systems and procedures  
14   for NRFU during that test.

15          Q    And when you say you tested your system  
16   and procedures, that was to do an evaluation of  
17   how effective the nonresponse follow-up was during  
18   the 2018 end-to-end test?                   401/403

19          A    Yes.

20          Q    So that is something you would learn from  
21   a field test?

22          A    Yes.   And primarily to see that the

1 systems and procedures worked as planned.

2 Q And is that an evaluation as part of the  
3 evaluation that is currently going on right now  
4 for -- of the results of the end-to-end field  
5 test?

401/403

6 A Yes.

7 Q All right. I'm going to switch gears,  
8 and I just have a few more questions, and then I  
9 think we have one more person who is going to  
10 -- and then we'll be done with you for tonight.

11 I think you testified earlier citizenship  
12 is on the CPS, this --

13 A Current Population Survey.

14 Q -- Current Population Survey; is that  
15 correct?

16 A That's my understanding, yes.

17 Q And then I think you said the  
18 Census Bureau is tracking item nonresponse rates  
19 on the CPS to the citizenship question; is that  
20 correct?

21 A We tracked item nonresponse rates for all  
22 of the questions.

1 A I'm not sure.

2 MS. BRENNAN: That's all I have. Can we  
3 go off the record just for a minute?

4 VIDEOGRAPHER: Time is 5:07 p.m. We're  
5 going off the record.

6 (Off the record.)

7 VIDEOGRAPHER: The time is 5:17 p.m.  
8 We're back on the record.

9 Please proceed, Counsel.

10 EXAMINATION BY MR. CASE:

11 Q Dr. Jarmin, my name is Andrew Case. I'm  
12 from Manatt Phelps & Philips. We represent the  
13 City of San Jose and Black Alliance for  
14 Just Immigration in the Northern District of  
15 California, Case Number 18-CV-2279.

16 Did the Census Department submit a list  
17 of topics to be included in the 2020 decennial  
18 census to Congress in March of 2017?

401/403

19 A Yes.

20 Q Was citizenship one of those topics?

21 A Not for the census.

22 Q Not for the short-form decennial census?

1 A Correct.

2 Q Did you discuss with anyone at Commerce  
3 that submission prior to receiving the letter from  
4 the DOJ in December?

5 A So I did not. So I wasn't involved in  
6 the submission of that document prior to that, and  
7 that probably would have been when those  
8 conversations would have taken place, so. 401/403

9 Q After you took over, as we'll call it,  
10 acting director --

11 A Much easier.

12 Q -- did you have conversations about the  
13 submission of topics that had previously been  
14 made?

15 A Not that I recall, no.

16 (Plaintiffs' Exhibit 34, Email, was  
17 marked.)

18 BY MR. CASE:

19 Q Give you a document that's been marked as  
20 Exhibit 24. This is Bates number 3470. I know  
21 you're not on the forwarded email, but you're on  
22 the email below dated October 11, 2017. I'd like

1 you first to identify the people on this email.

2 A On which one?

3 Q The one below, the October 11th one.

4 A So Joanne Crane is our CFO.

5 Lisa Blumnerman was, I think, still at that time  
6 the head of decennial, and Enrique as acting  
7 deputy director.

8 Q And in the subject line, there's two  
9 questions from Molly McCarthy on citizenship as a  
10 topic. Who is Molly McCarthy?

11 A She's a Hill staffer, I believe.

12 Q For whom?

13 A I don't know.

14 Q Do you know which party?

15 A No.

16 Q Okay. And the first question, in short,  
17 is whether the topics are closed or whether a new  
18 question can be added that's not one of the  
19 topics. Is that a fair summary of that?

20 A Yes. 401/403

21 Q And what was your answer to that question  
22 in October of 2017?



1           A     Yes.  That's -- that's the one we  
2     discussed this morning.

3           Q     So at least two?

4           A     Yeah.

5           Q     Okay.  During that second  
6     meeting -- you're talking about the February 19th  
7     letter, but I think it was a January 19th letter.  
8     Is that -- is there a February 19th letter, as  
9     well?

10          A     I think -- wasn't it February 19th?

11          Q     Well, there's a lot of letters,  
12     but -- during the meeting where Secretary Ross  
13     expressed concern about imputation --

14          A     Right.

15          Q     -- whatever day it took place on, did  
16     Secretary Ross state that he had scientific data  
17     to suggest that asking the citizenship question  
18     would provide better information than imputation?

19          A     So the total number of cases that you  
20     would have to impute asking the question is lower  
21     than if you used administrative data.

22          Q     What did Secretary Ross say regarding his

1 concerns about imputation?

2 A I think his concern is the same concern  
3 that we all have, that imputed data is lower  
4 quality than nonimputed data. 401/403/802

5 Q Did he say there was any scientific basis  
6 he was relying on that had -- that said asking the  
7 question would produce better results?

8 A He did not cite any, no.

9 Q And did anyone from Census cite data that  
10 imputation would provide better results?

11 A So I think that the comparison on our end  
12 was that -- that there would be an increase in the  
13 NRFU workload, and that, you know, for some  
14 cases, you know, the administrative data appeared  
15 to be more accurate than self-response data.

16 Q Does the Census impute data for any items  
17 that are on the ACS and are not on the  
18 short-form census?

19 A We impute data for almost every item,  
20 yeah.

21 Q And did Secretary Ross express any  
22 concern about the quality of that data?



1           A     He did not.

2           Q     Grandparents as caregivers?

3           A     We don't -- weren't discussing that,  
4     though.

5           Q     Has he ever -- has anyone from Commerce  
6     ever expressed concern about imputed data for  
7     items on the ACS that weren't on the short form?

8           MS. BAILEY:   Objection.   Foundation.

9           THE WITNESS:   No.           401/403/802

10       BY MR. CASE:

11           Q     In either of the meetings that you had  
12     where Secretary Ross was present, did he say that  
13     he had been interested in the question before the  
14     DOJ letter?

15           A     He did not.

16           Q     Did he say that the Census Department had  
17     reached out to DOJ to create that letter?

18           MS. BAILEY:   Objection.   Assumes facts  
19     not in evidence.

20           THE WITNESS:   That the Census Department  
21     had reached out --

22       BY MR. CASE:

1 A Right.

2 Q -- or when --

3 A Right.

4 Q -- the document is talking about

5 Alternative B will result in erroneous

6 enumerations.

401/403

7 Do you agree with that statement?

8 A Yes.

9 Q That Alternative B will result in

10 erroneous enumerations?

11 A Yes.

12 Q I'd like you to look to your Exhibit 16,

13 which is that March 1 letter I gave you before.

14 A Which one? This one?

15 Q Yeah, 9182. Look on Page 9816, if you

16 would, near the front, the cover letter.

17 Do you see the statement of how

18 Alternative D will include all the negative -- I

19 don't have it in front of me -- but all the

20 negative impacts --

21 A Right.

22 Q -- of Alternative B?

1 A Right.

2 Q Do you agree with that statement?

3 A Yes.

4 Q Do you agree, therefore, that

5 Alternative D will include the erroneous

6 enumerations for Alternative B?

7 A Yes.

8 Q Alternative D will result in erroneous

9 enumerations?

10 A Yes.

11 Q Just -- yeah. One quick thing on the  
12 actual decisional memo, which is Abowd Exhibit 12.

13 Page 5, which is 1317, on the top of the page,

14 fourth line down, "For the approximately

15 90 percent of the population who are citizens,

16 this question is no additional imposition."

17 What do you understand that sentence to

18 mean?

401/403

19 A So that's -- that those -- those people

20 will not have any objections to filling out the

21 questionnaire.

22 Q But it will be an imposition, won't it?

401/403

1           A    All questions are an imposition, yes.

2           Q    So -- okay. So, yes, it would be an  
3   imposition.

4                   And one quick thing, on the front here,  
5   first page, bottom paragraph, "I also met with  
6   Census Bureau leadership on multiple occasions."

7           A    Uh-huh.

8           Q    How many times did you meet with  
9   Secretary Ross to discuss the DOJ request?

10          A    I don't know the number. I'd have to go  
11   back and look at my calendar.

12          Q    More than once?

13          A    We've already established at least twice.

14          Q    At least twice.

15                   More than twice?

16          A    So, you know, I mean, there was -- there  
17   was discussions where we didn't have much of a  
18   discussion, just that we were looking at it and  
19   then there was more meeting discussions that  
20   happened later.

21          Q    What were the discussions where you were  
22   just looking at it like --

1           A     That we were beginning our process and  
2     doing a technical review.

3           Q     Were these face-to-face meetings or phone  
4     calls?

5           A     Face-to-face.

6           Q     Okay. You testified this morning with  
7     regard to finding people to speak to the  
8     Secretary, that you reached out to AEI because  
9     they are, quote, I believe this is correct, on the  
10    conservative side of D.C. politics; is that  
11    correct? 401/403

12          A     Correct.

13          Q     What about the citizenship question led  
14    you to believe that a group on the conservative  
15    side of the D.C. politics would be in favor of it?

16          A     Because that's where the support for the  
17    question has been generated in the past.

18          Q     And what groups in the past have  
19    supported this question? 401/403/802

20                MS. BAILEY: Objection. Calls for  
21    speculation.

22    BY MR. CASE:

1 Q The support that you just referenced?

2 A Republicans in Congress.

3 Q Which Republican specifically that you  
4 recall.

401/403/802

5 A I believe it was Vitter.

6 Q And what is Vitter's reason for adding a  
7 citizenship question, if you know?

8 MS. BAILEY: Objection. Calls for  
9 speculation.

10 THE WITNESS: I don't recall his exact  
11 reason.

12 BY MR. CASE:

13 Q But your association with the citizenship  
14 question is with the David Vitter amendment of  
15 2009?

16 A That's -- that -- my association?

17 Q You understand --

18 A I recall that that happened, yes.

19 Q Do you recall any groups that are  
20 associated with voting rights having support for  
21 the citizenship question on the census?

22 A No.

1 Q Did you reach out to any groups or people  
2 who have experience enforcing the Voting Rights  
3 Act while looking for people to speak to --

4 MS. BAILEY: Objection. Asked and  
5 answered.

401/403

6 THE WITNESS: I did not.

7 BY MR. CASE:

8 Q One of the other people I believe  
9 mentioned in the email thread was Mr. Camorrota.  
10 Does that name sound familiar to you?

11 A From this morning, yeah.

12 Q Yeah. And what organization is he  
13 associated with?

14 A I believe Heritage.

15 Q Is he also associated at some point with  
16 the Center for Immigration Studies?

17 A I -- that seems to ring a bell, yes.

18 Q Do you know the Center for Immigration  
19 Studies?

20 A Not intimately, no.

21 Q Do you understand them to be a group that  
22 is supportive of enforcing the Voting Rights Act?

1 MR. CASE: Can I ask just one question  
2 based on that?

3 FURTHER EXAMINATION BY MR. CASE:

4 Q You testified that the process is for the  
5 short form. Is there any reason that there should  
6 be --

7 MS. BAILEY: Mischaracterizes testimony.

8 MR. CASE: I'm sorry.

9 BY MR. CASE:

10 Q Tell me what you understood the answer to  
11 be there about the five-step process.

12 A So we've not entertained additions to the  
13 long form of the census. The process was for the  
14 census generally -- I mean, the short form. So  
15 prior to the ACS, people requested new questions,  
16 they were put on the long form, not on the short  
17 form. The short form has gotten shorter over the  
18 years, not longer.

19 Q Is there any reason to engage a less  
20 robust process for the short-form census than for  
21 the long-form census?

401/403

22 A No.



ACKNOWLEDGEMENT OF DEPONENT

I, DR. RON JARMIN, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

\_\_\_\_\_  
Date

\_\_\_\_\_  
DR. RON JARMIN

Kate Bailey, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.  
United States Department of Commerce, et al.

# EXHIBIT F

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,  
Defendants.  
-----

Washington, D.C.

Tuesday, August 28, 2018

Deposition of:

KAREN DUNN KELLEY

Global  
Objection:  
401; 403

called for oral examination by counsel for  
Plaintiffs, pursuant to notice, at the office of  
Arnold & Porter, 601 Massachusetts Avenue NW,  
Washington, D.C., before KAREN LYNN JORGENSEN,  
RPR, CSR, CCR of Capital Reporting Company,  
beginning at 9:04 a.m., when were present on  
behalf of the respective parties:

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

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A P P E A R A N C E S

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10 VIDEOGRAPHER: Dan Reidy  
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P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:04 a.m. on Tuesday, August 28, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones and place them away from the microphones, as they can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the deposition of Karen Dunn Kelley taken by counsel for the plaintiff in the matter of New York Immigration Coalition, et al., versus U.S. Department of Commerce, et al. This case is filed in the U.S. District Court for Southern District of New York. This deposition is held at the law offices of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

My name is Dan Reidy from the firm

1 Veritext Legal Solutions, and I'm the  
2 videographer. The court reporter is  
3 Karen Jorgenson from the firm Veritext Legal  
4 Solutions.

5 I am not authorized to administer an  
6 oath. I am not related to any party in this  
7 action, nor am I financially interested in the  
8 outcome. Also, counsels' appearances will be  
9 noted on the stenographic record rather than  
10 orally at this time.

11 Will the court reporter please swear in  
12 the witness?

13 KAREN DUNN KELLEY, Global  
Objection:  
401; 403  
14 called as a witness, and having been first duly  
15 sworn, was examined and testified as follows:

16 THE WITNESS: Yes, I do.

17 EXAMINATION BY MR. GROSSI:

18 Q Good morning, Secretary Kelley. We met  
19 briefly in the hall. But for the record, my name  
20 is Peter Grossi, and I'm an attorney here with  
21 Arnold & Porter. And I'm going to be leading off  
22 this morning. We represent the plaintiffs, the

1 just said?

2 You're good. And I just would like to  
3 say good morning. I think I said good morning to  
4 each of you, but I did miss one or two as I  
5 came -- as you came in. So if I missed you, I  
6 apologize and good morning.

7 BY MR. GROSSI:

8 Q That's okay. Lots a people.

9 A Yes. A lot of people.

10 Q So let's begin a little bit with your  
11 background, for the record.

12 A Yes.

13 Q So I understand you graduated with a BS  
14 degree from the College of Commerce and Finance at  
15 Villanova University?

16 A Yes, I did.

17 Q And you then pretty much started in the  
18 investment business in 1982 with Drexel Burnham?

19 A Yes, sir.

20 Q And then you joined a different firm,  
21 Federated Investors in 1986; is that right?

22 A Yes.

1 Q Then in 1989, you joined a firm known as  
2 Invesco, correct?

3 A Not -- no.

4 Q Okay. Clarify, please.

5 A I joined a legacy firm called  
6 AIM Management, which, through a series of mergers  
7 and acquisitions became Invesco when I left. But  
8 when I started in 1986, it was AIM Management.

9 Q Okay. Thank you for the clarification.  
10 You then worked at either AIM or Invesco  
11 itself until fairly recently, 2017?

12 A Yes. I -- from the time I started AIM  
13 through its legacy companies until I left last  
14 summer.

15 Q Okay. You initially started as a money  
16 market portfolio manager?

17 A Yes. Money market and government  
18 portfolio.

19 Q But by the end, you hold -- held various  
20 positions and, ultimately, were in senior  
21 management of Invesco; is that correct?

22 A That is correct.

1 have you ever had training and experience in  
2 conducting surveys --

3 A No.

4 Q -- of the public?

5 Let me finish.

6 Okay. Let me ask now a little bit about  
7 your early --

8 A So excuse me. Could you please then  
9 repeat that whole question so I --

10 Q Sure.

11 A -- I did not interrupt you. That was  
12 rude. I apologize.

13 Q No. Not at all.

14 Did you ever have any training or  
15 experience in conducting surveys of the public?

16 A No.

17 Q Okay. Now, let me ask about your  
18 relationship with now Secretary Ross. Originally,  
19 it was Mr. Ross when you met him, right?

20 A Yes.

21 Q Okay. And did you first meet him in  
22 about 2006 when his company was folded in or

1 became part of Invesco?

2 A Yes.

3 Q You didn't know him before then?

4 A I might have met him or been at a panel  
5 with him or an event with him, but I did not know  
6 him.

7 Q Okay. And his company was an investment  
8 company that became part of Invesco?

9 A Yes.

10 Q And you worked with him while you were at  
11 Invesco, correct?

12 A Yes. I would -- I would like you to  
13 clarify the word "with."

14 Q Okay. Specifically around 2008, 2009 in  
15 the financial crisis, did you do a great deal of  
16 work with him in various deals?

17 A Yes. I did not work within his silo or  
18 his company, but we actually did partner on  
19 certain aspects in particular during the financial  
20 crisis, yes.

21 Q Okay. Good.

22 You attended meetings, I guess, when he

1           A    No.  She did not stay on throughout that  
2 whole time.

3           Q    About how long did she stay on?

4           A    I don't remember, sir.

5           Q    Okay.  Fair enough.

6                   Now, I would like to switch a little bit  
7 to your nomination, which brings us here, your  
8 nomination for -- to become Under Secretary of  
9 Commerce for Economic Affairs.

10                   That was formally announced by the  
11 president on May 25, 2017?

12                   I'm not going to hold you to the date.

13           A    Okay.  Then the answer is yes, it was  
14 announced -- I would not -- I would not swear to  
15 that date.

16           Q    Okay.  Fair enough.  And I wanted to ask  
17 you a little bit, because I'm assuming that you,  
18 obviously, heard about the possibility and then  
19 agreed to take the position earlier.  So let me  
20 back up.

21                   When were you first approached or when  
22 did you first get any inkling that they might want



1           Q    Do you recall around that time having  
2           conversations with Mr. -- then Mr. Ross or  
3           Secretary Ross?

4           A    I -- I don't have a time reference. I  
5           apologize.

6           Q    So you don't really have a clear  
7           recollection of one particular interaction, maybe  
8           by phone or in person, where he said something  
9           like the job we have in mind is Under Secretary  
10          for Economic Affairs?

11          A    After he was the Secretary, he clarified  
12          that that was the position he would want for me to  
13          take.

14          Q    Did he send you any paperwork or any  
15          information about what that Under Secretary did?

16          A    I was -- I had all of the requisite  
17          information that was on the website on -- you  
18          know, on the Commerce Department websites and  
19          those things, and I had certainly done a  
20          tremendous amount of homework --

21          Q    Okay. Sure.

22          A    -- on that position --

1 Q Absolutely.

2 A -- once we discussed it.

3 Q And do you remember before you were even  
4 nominated, discussing with Secretary Ross the  
5 specific responsibilities or jurisdiction of the  
6 Under Secretary For Economic Affairs?

7 A I don't recall.

8 Q Okay. When do you think it was the first  
9 time that you found out that one of the three  
10 branches that the Under Secretary supervises is  
11 the Census Bureau?

12 A Early on, early on.

13 Q Sure. I mean, one of -- there are just  
14 three major branches, right, that the Under  
15 Secretary For Economic Affairs supervises?

16 A Yes. Yes.

17 Q All right.

18 A Well, it's really -- it supervisors ESA,  
19 and ESA supervises two branches.

20 Q Fair enough.

21 A So I don't want to -- a little bit of  
22 semantics, but there is a nuance difference, and

1 so I don't want to misrepresent.

2 Q Okay. I appreciate that. When do you  
3 think it first occurred to you that this would be  
4 an important job, in part, because Census Bureau  
5 was going to do the 2020 census and fairly soon  
6 you'd be involved in that process?

7 A Oh, absolutely understood. It was a huge  
8 program, and it was a management responsibility.

9 Q And you understood that even before you  
10 were officially nominated?

11 Go ahead. You have to answer.

12 A Yes, sir. But allow me to say, as I have  
13 learned more, it has certainly -- the gravity of  
14 the position has -- you know, I always recognized  
15 the importance.

16 Q Sure. Okay. So it's fair to say that by  
17 the spring of 2017, you knew you were going to be  
18 nominated for a position which would have, among  
19 other things, significant responsibility for the  
20 2020 census?

21 A Yes, sir.

22 Q Now, when do you think you first talked

1 priorities, you were talking about the president,  
2 right?

3 A So if I can back up, I need to clarify my  
4 last answer. Because we -- you said that I went  
5 and spoke specifically of the census throughout  
6 the rest of the document, and that is not correct.  
7 Because I also indicate economical statistical  
8 programs, which have -- would have included BEA  
9 programs, such as GDP and recreational numbers and  
10 things like that. So I have to clarify my  
11 original answer that I said it was only specific  
12 to census. That is not true.

13 Q Let's go back to that phrase about, "one  
14 of his priorities is effective and meaningful  
15 management and oversight of the 2020 census."

16 The context there was one of the  
17 President's priorities, right?

18 A Yes. The --

19 Q How did you learn the President's  
20 priorities with respect to the census?

21 A When I interviewed with the White House  
22 under PPO, during the process -- and we knew what

1 the role was at that point, had been clarified.  
2 The census was one of the portfolio  
3 responsibilities of that role, and they said that  
4 was an important -- that was -- that it was  
5 important. As well as the Secretary reiterated  
6 that that was a priority of the Department, and it  
7 was priority.

8 Q And, specifically, it was a priority of  
9 the President, it was one of his priorities was  
10 managing the 2020 census, right?

11 A Yes.

12 Q Okay. What specifically did you  
13 understand the President's priorities to be with  
14 respect to the 2020 census?

15 A Complete and accurate count.

16 Q As complete and as accurate as it could  
17 be?

18 A Complete and accurate.

19 Q And you always understood sometime in  
20 that spring or summer, that one of the priorities  
21 of the White House was adding a citizenship  
22 question, correct?

1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: I said that I learned it  
4 was a priority of the Secretary's.

5 BY MR. GROSSI:

6 Q Okay. Did you -- did the Secretary tell  
7 you that he was interested in it, in part, because  
8 it was also one of the President's priorities or  
9 perhaps he used the phrase the White House's  
10 priorities?

11 A No.

12 Q He never, ever has told you that one of  
13 his reasons for wanting the census question added  
14 was because the White House staff thought that was  
15 a good idea?

16 A No.

17 Q Never?

18 A Not to my recollection, no.

19 Q Do you think it's possible and you just  
20 don't recall at this moment?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: No, not -- not to my

1 recollection.

2 BY MR. GROSSI:

3 Q You talked to the Secretary quite a bit  
4 about the census -- citizenship question over the  
5 year, right?

6 MR. GARDNER: Objection. Lack of  
7 foundation.

8 BY MR. GROSSI:

9 Q Well, you have talked to the Secretary  
10 about adding the citizenship question, correct?

11 A Yes. Correct.

12 Q How often would you say?

13 A In May -- and I apologize if this is a  
14 little long-winded.

15 In May, after the GAO report, and I came  
16 in August, the immediate -- my immediate  
17 responsibilities were to address the issues in  
18 that GAO report, which talked about the budget,  
19 the leadership and the operational readiness and  
20 those things. And there -- we were also at that  
21 same time preparing for the 2018 end-to-end test,  
22 which started this past April 1st.

1           So as I came in, those were the  
2 priorities we -- we spent time on and that I  
3 operationally spent time on as we went through  
4 when I started my work.

5           So I would suggest to you between August  
6 and beginning of November, we spent time on the  
7 lifecycle cost, the lifecycle budget, the  
8 budgetary issues.

9           We also spent a tremendous amount of time  
10 in the October, beginning of November -- November  
11 time frame, on the management of the census,  
12 because we were moving from research and  
13 development to actual execution, if you will. And  
14 so we spent time on the leadership and what was  
15 happening there.

16           And then, thirdly, we spent time  
17 throughout that entire process on operational  
18 readiness, systems readiness, responding to the  
19 GAO report, making sure we were prepared, making  
20 sure we had everything in line to start the test  
21 and there were other decisions that needed to be  
22 made. So at -- I did know the citizenship



1 question was going to be on there, but that was an  
2 issue that I didn't need to deal with until later  
3 on, because they -- in a time frame, other issues  
4 needed to get addressed immediately --

5 Q Okay.

6 A -- from an operational perspective.

7 Q So your recollection is as early as May,  
8 you had heard about the citizenship question, but  
9 it was only one feature of an overall review of  
10 the census that kept you busy?

11 A And --

12 MR. GARDNER: Objection.

13 Mischaracterizes the witness's testimony.

14 BY MR. GROSSI:

15 Q Correct?

16 A No. It was not part of the review I was  
17 doing on the census at that time.

18 Q But you knew that adding a citizenship  
19 question was something that Secretary Ross wanted  
20 to do, right?

21 A At -- yes.

22 Q Okay?

1 various responsibilities, that adding a  
2 citizenship question was a topic under discussion,  
3 correct?

4 A I'm sorry. Please repeat the question.

5 Q As of July 2017, when you testified to  
6 Congress, you knew that the potential of adding a  
7 citizenship question to the 2020 decennial census  
8 was under consideration by Secretary Ross,  
9 correct?

10 A I do not know exactly when I learned  
11 that. It is very plausible I did know it by that  
12 time.

13 Q Okay. Who was responsible for helping  
14 you prepare for this testimony in your nomination  
15 process at Commerce?

16 A The Legislative Affairs department is  
17 responsible for helping the process. And so in  
18 that process, I was assigned three individuals to  
19 help me go through the process. And those three  
20 individuals I worked -- I worked -- let's say four  
21 individuals, one was the senior, but assigned the  
22 three, four, and then that was who I was assigned.

1           A     They were all public documents. They  
2     have a quarterly review, a PMR they call it, for  
3     the census. On a quarterly basis, they would --  
4     provided me all those public documents so I could  
5     review them, ask questions, and then they provided  
6     me the websites for the 2020 census. Census has a  
7     very large website, and so they provided me all  
8     the website information, and so we looked at that.  
9     I was only provided public information.

10          Q     Okay. Let me have this exhibit marked as  
11     Exhibit 2.

12                 (Plaintiffs' Exhibit 2, Email chain, was  
13     marked.)

14     BY MR. GROSSI:

15          Q     Okay. Secretary Kelley, this is an email  
16     chain, Exhibit 2, begins with the Bates 1404 and  
17     runs to 1406, and like all of those email chains I  
18     think we'll be doing today, it goes in reverse  
19     order. As you know, they keep piling on top.  
20                 So I'm going to go to the end first, and  
21     ask you if it refreshes your recollection that on  
22     or about July 24, 2017 you had communicated in

1 some fashion with Mr. Willard, asking for a review  
2 of the process of how questions are created and  
3 chosen for the ACS. Do you remember making that  
4 type of inquiry through Mr. Willard?

5 A Yes.

6 Q Okay. And then he enlisted the help of a  
7 Victoria Velkoff. You know her? Or at least you  
8 know her now?

9 A I know her now, Tori.

10 Q Right.

11 A She goes by Tori, yes.

12 Q Tori. And she works at Census?

13 A And, in fact, I'm sort of amazed -- I'm  
14 saying, oh, there's -- that -- I didn't know that  
15 was Tori.

16 THE WITNESS: Does everybody have this  
17 paper in the room?

18 BY MR. GROSSI:

19 Q Anybody who has it, needs it.

20 And then Mr. Willard refined his request  
21 above and said, "What we would primarily like to  
22 discuss with you today, is the" -- "is how the

1 process works to when questions are discussed and  
2 are approved to be used on the ACS and also those  
3 on the census questionnaire."

4 Does that refresh your recollection, that  
5 one of the things that you discussed with  
6 Ms. Velkoff, perhaps, and Mr. Willard, in  
7 July 2017, was specifically how questions are  
8 added to a decennial census questionnaire?

9 A Yes.

10 Q Okay. So we're clear, that as of late  
11 July 2017, you had a specific interest in how a  
12 question would be added to the decennial census,  
13 correct?

14 A As it applied to a particular topic that  
15 was being discussed.

16 Q And what topic was that?

17 A The SOGI topic.

18 Q Just the SOGI topic?

19 A Yes.

20 Q You didn't know that they were also  
21 dealing at that same time with a citizenship  
22 question?

1 A I --

2 MR. GARDNER: Objection to form.

3 THE WITNESS: I was --

4 BY MR. GROSSI:

5 Q Is that your testimony?

6 A I was dealing -- this has to do with the  
7 SOGI question.

8 And would you like me to explain?

9 Q I don't need to know about that. I just  
10 need to make it clear that your conversation was  
11 also at a time when you knew they were thinking  
12 about adding a citizenship question, as well.

13 MR. GARDNER: Objection.  
14 Mischaracterizes the witness's prior testimony.

15 BY MR. GROSSI:

16 Q I mean, it can be both, Sec- --  
17 Ms. Madam Secretary?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Sir, you're going to have  
20 to go back. Because you're starting to tie things  
21 together with ends and -- you know, ands and buts  
22 that I'm not following.

1           This topic, let me be very clear, had to  
2   do with the SOGI issue. I was going to be -- I  
3   was going to be asked a SOGI question on the -- at  
4   the testimony. There was a -- the topics -- and  
5   I'm sorry if I'm boring you and you all know  
6   this -- the topics for inclusion in the census  
7   need to be given the March prior, so not March of  
8   '18 but March of --

9           Q    '19?

10          A    -- '17.

11       BY MR. GROSSI:

12          Q    '17, right.

13          A    And there was an issue whether there  
14   would be a SOGI question or not. And when I was  
15   told I was going to be asked about that, I said I  
16   would like to know the process. Topics go on. I  
17   did not know the details to know how the topics  
18   get put on it, and then it's a year later, the  
19   questions get put on it, and how does that work?  
20   And I asked for that information in regard to the  
21   SOGI question.

22          Q    Were you also advised that at that point

1 in time, Mr. Ross -- Secretary Ross was being  
2 approached by various people to put a citizenship  
3 question on --

4 A No.

5 Q -- the 2020 census?

6 You're very confident that he never told  
7 you that?

8 A I don't know. And I've repeated that. I  
9 don't know when I learned that information. And  
10 I'm very sorry I don't, but I don't.

11 Q Okay. Let's see if we can maybe do a  
12 little refreshing.

13 I'm marking as Exhibit 3,  
14 Bates Number 0763-64, which is an email chain,  
15 again, that runs from July 14, 2017 to  
16 July 24, 2017.

17 (Plaintiffs' Exhibit 3, Email chain, was  
18 marked.)

19 BY MR. GROSSI:

20 Q Before we begin this, just one quick  
21 follow-up question on the last bit of testimony.  
22 Was that --



1 A May I finish reading this?

2 Q Oh. I'm sorry. Go ahead.

3 A Yes, sir.

4 Q Before we turn to the exhibit, I just  
5 want to follow up on one thing.

6 The SOGI topic that you mentioned a  
7 moment ago, was that topic being considered and  
8 included in the ACS or also in the decennial  
9 census?

10 MR. GARDNER: Objection. Form.

11 THE WITNESS: I was not there at the  
12 time, but there was a discussion at the time that  
13 the information was going on the topics as to  
14 whether or not that would be a topic back in  
15 March of '17 that would be put forth when the  
16 topics are put forth.

17 BY MR. GROSSI:

18 Q For the -- for the ACS study?

19 A I don't know which -- which, but that was  
20 pulled as a topic being discussed.

21 Q Okay.

22 A And, therefore, there was a discussion

1 about the SOGI issue and how it would -- why it  
2 was pulled, why it was not pulled, why it was on  
3 there. There was a whole myriad of discussion  
4 around it. Of course, I knew nothing about that  
5 topic. So I, just for an educational purpose,  
6 said if I'm going to ask, I wanted to learn how  
7 this works. Going from a topic to inclusion on  
8 any or either, it didn't matter to me. How does  
9 this happen?

10 Q But you're not testifying that you were  
11 ever told that the SOGI topic would be included on  
12 the decennial census, correct?

13 A I am not testifying to that.

14 Q And so when Mr. Willard said you were  
15 interested in how citizenship -- how questions  
16 were added to the decennial census, that was  
17 somewhat broader than the SOGI topic, correct?

18 A No. It was written in regards to the  
19 SOGI topic.

20 Q Okay. Let's take a look at what's been  
21 written in regard to Exhibit 3.

22 A Yes.

1 BY MR. GROSSI:

2 Q Okay. Let me actually turn to that.

3 MR. GARDNER: Tell you what, Counsel,  
4 before we go to the next document, take a break?

5 MR. GROSSI: Sure.

6 MR. GARDNER: We've been going about an  
7 hour.

8 VIDEOGRAPHER: This concludes Media Unit  
9 Number 1. The time on the record is 10:06 a.m.  
10 We are off the record.

11 (Off the record.)

12 VIDEOGRAPHER: This begins Media Unit  
13 Number 2. The time on the video is 10:18 a.m. We  
14 are on the record.

15 (Plaintiffs' Exhibit 4, Supplemental  
16 memorandum, was marked. Plaintiffs' Exhibit 5,  
17 Defendants' objections, was marked.)

18 BY MR. GROSSI:

19 Q Secretary Kelley, I'd like to hand you  
20 two exhibits. The first is Exhibit 4, which is a  
21 supplemental memorandum by Secretary of Commerce  
22 Wilbur Ross, has Bates number 1321. And I will

1 also give you a copy as Exhibit 5 of the  
2 defendants' objections and responses to  
3 plaintiffs' first set of requests of  
4 interrogatories. And I've tabbed Page 14, and  
5 I'll let you know that that's the only page I'll  
6 be asking you about.

7 MR. GARDNER: Peter, you said 14?

8 BY MR. GROSSI:

9 Q Okay.

10 A No. Where on --

11 Q Just on the bottom --

12 A Where on Page 14 do you want me to --

13 Q The list of names at the bottom, and I'll  
14 direct your attention to it and give you plenty of  
15 time.

16 A The list of names at the bottom?

17 Q Yeah.

18 A Okay. And then -- yes, sir.

19 Q Okay. Do you see in Exhibit 4, this is a  
20 supplemental memorandum? Have you seen this  
21 document before?

22 A One other time.

1 Q When was that?

2 A Yesterday.

3 Q Okay. Not before it was issued?

4 A No. I was not part of the issuing of  
5 this.

6 THE WITNESS: I'm sorry. Did you not  
7 hear me? I -- did you hear me? I apologize.  
8 Speak up?

9 MS. BOUTIN: Just a little bit.

10 THE WITNESS: I'm sorry. And usually I'm  
11 very loud, so I apologize. I -- I --

12 BY MR. GROSSI:

13 Q Do you know why this supplemental  
14 memorandum was added to the record so late as June  
15 of this year?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 THE WITNESS: To supplement the  
19 information is my assumption.

20 BY MR. GROSSI:

21 Q The information that Congress was  
22 concerned about after they learned that people,

1 other Census and Commerce Department officials,  
2 had talked about the citizenship question,  
3 correct?

4 MR. GARDNER: Objection. Lack of  
5 foundation.

6 THE WITNESS: To supplement the  
7 memorandum of the Secretary regarding the  
8 administrative record.

9 BY MR. GROSSI:

10 Q You were involved in that original  
11 memorandum, correct, March 26th?

12 A Which memorandum are you speaking, sir?

13 Q The March 26, 2018 memorandum of  
14 decision.

15 A The decision memorandum to me.

16 Q Okay. Right. But you were also  
17 involved -- you were actually involved in its  
18 preparation, correct?

19 A I was involved in the proofing, not the  
20 preparation.

21 Q Okay. You didn't actually draft any  
22 portions of it?

1 A No.

2 Q You weren't asked for your input before  
3 it was essentially put in the final form?

4 A I -- I looked at it over the few days  
5 before it was released, in proofing it.

6 Q What changes did you make?

7 A I don't remember. Minor changes. I  
8 don't remember anything substantive.

9 Q How about any other people in the  
10 Census Bureau, did they make any changes?

11 A The Census Bureau?

12 Q Yes.

13 A The Census Bureau made a few -- a few  
14 changes, but, again, nothing substantial.

15 Q They had not been involved in drafting  
16 it, correct?

17 A Could --

18 MR. GARDNER: Objection to form.

19 THE WITNESS: Could you define the word  
20 drafting? To me, anything up to a final form is  
21 still in draft. So you're -- I don't want to get  
22 balled up with your nomenclature. To me, anything

1 A In preparation for my -- my hearing.

2 Q Okay. And you -- did you communicate  
3 with any of those people by email?

4 A No. They were communicated by -- with  
5 the people at -- the four people that worked with  
6 me. I didn't have an email at Commerce at that  
7 time.

8 Q I understand. You had an email at  
9 Invesco or your personal email account?

10 A Right. And we did not -- we did not  
11 email.

12 Q But we haven't checked that out yet,  
13 right?

14 A Right.

15 Q Okay. Well, let me just ask about  
16 Exhibit 7, in the hopes it might refresh your  
17 recollection about other things.

18 Do you recall hearing, perhaps when you  
19 came in in late August, that Secretary Ross was  
20 attempting to get the Department of Justice to  
21 request that the citizenship question be added?  
22 And maybe it's August, maybe it's September of



1 2017, when you first came on board.

2 A No. I was not aware of that.

3 Q You didn't know that he was attempting to  
4 get people at the Department of Justice to say  
5 they wanted a citizenship question?

6 A I knew he was in conversation with  
7 people, but you said that he was trying to get  
8 them to do something. I have no -- what the  
9 Secretary tried to get people to do or try to do.

10 Q Is that another question that we could  
11 ask Secretary Ross --

12 MR. GARDNER: Objection. Form.

13 BY MR. GROSSI:

14 Q -- best?

15 MR. GARDNER: Calls for speculation.

16 BY MR. GROSSI:

17 Q Would Secretary Ross be the best person  
18 to ask about what Secretary Ross was doing with  
19 the Department of Justice on this issue?

20 A I would always say that -- best to ask  
21 the person that you're speaking about questioning.  
22 I don't exactly know how to answer that. I mean,

1 just as we asked Karen what I said, which was on  
2 the record.

3 Q Let me have marked the next exhibit.  
4 (Plaintiffs' Exhibit 8, Email, was  
5 marked.)

6 BY MR. GROSSI:

7 Q We're marking as Exhibit 8 a  
8 memorandum -- I'm sorry -- an email. The top one  
9 of which is dated August 16, 2017.

10 Now, this email indicates that  
11 Mr. Earl Comstock wrote to Secretary Ross on  
12 August 11th and he stated, quote, per your  
13 request, here is a draft memo on the citizenship  
14 question that James Uthmeier in the Office of  
15 General Counsel prepared and I reviewed. Once you  
16 have had a chance to review, we should discuss so  
17 we can refine the memo to better address any  
18 issues.

19 And it appears that Ms. Teramoto then  
20 followed up on that by saying that Peter Davidson  
21 and Karen Dunn Kelley will both be here Monday.  
22 Let's spend 15 minutes together and sort this out.

1 And then Mr. Comstock responded to  
2 Ms. Teramoto and to Secretary Ross by copy saying,  
3 "Thanks, Wendy, that works for me."

4 Now, Wednesday was August 16th, and I'll  
5 represent that the Monday was August 20th. Is  
6 that consistent with your recollection that you  
7 came in on August 20th and had a discussion about  
8 various things?

9 MR. GARDNER: I think your math is wrong.

10 THE WITNESS: Sir, I think it was the  
11 21st.

12 MR. GARDNER: The 21st.

13 THE WITNESS: August 21st. Or I said the  
14 wrong date before, as well, so we have to correct  
15 Monday -- Monday was the 21st.

16 BY MR. GROSSI:

17 Q You're right. Absolutely right.

18 So Monday was the 21st, and that's the  
19 day you came in and assumed your position, okay.

20 And so you discussed with them on  
21 August the 21st, among other things, I'm sure, the  
22 draft memo on the citizenship question that had

1 been prepared for Secretary Ross, correct?

2 A I do not recall any conversations like  
3 that.

4 Q Do you think that might have been the  
5 first time you really got into the details of  
6 adding it?

7 A I don't recall a conversation about it.

8 Q Okay. But you wouldn't deny that as of  
9 August 21st, you had been briefed on the  
10 citizenship issue?

11 MR. GARDNER: Objection. Mischaracterize  
12 the witness's testimony.

13 THE WITNESS: As I said, I do not,  
14 unfortunately, remember when I first learned about  
15 it. It is possible. I'm not denying it. I'm not  
16 confirming it. I just don't know. I wish I  
17 could -- I wish I could tell you. I just don't  
18 know.

19 BY MR. GROSSI:

20 Q Did you receive memoranda about the  
21 citizenship question, and that's a shorthand of,  
22 obviously, adding a citizenship question to the

1 BY MR. GROSSI:

2 Q Were you relying on the experts in the  
3 Census Bureau?

4 A I was not relying on anything, but I rely  
5 heavily on the experts at the Census Department  
6 for many things. But in terms of your question,  
7 was I relying on it for the citizenship question?  
8 That preassumes that I'm answering the  
9 question -- I'm making the decision, and I was not  
10 making the decision.

11 Q Other than Secretary Ross, as the  
12 Secretary, and the people in the Census Bureau, as  
13 the experts, who else decided who else made  
14 recommendations concerning whether or not there  
15 should be a citizenship question?

16 A In October -- in December, when this  
17 came, that the question needed to be evaluated and  
18 a discussion about whether the question would be  
19 on the 2020 -- 2020 form of questions going to  
20 Congress in March of '18, I spoke to the senior  
21 people at the Census, the senior team. And I  
22 said, we have this letter. We need to now give

1 the Secretary all the information. He needs to  
2 make this decision. And there are pieces of it,  
3 and what is your recommendation? And when we  
4 spoke to them, we said at the top of the house,  
5 there needed to be a legal review. There needed  
6 to be a technical/operational review and a policy  
7 position. Those were the three major things that  
8 needed to take place.

9 Obviously, the legal review being done by  
10 the legal department. The Census handling the  
11 technical and operational -- technical or  
12 operational, whatever term you prefer, review, and  
13 the combination of those plus auxiliary  
14 information that would be provided would create  
15 the ability for the Secretary to make a policy  
16 position on that.

17 Q And that was something you did in  
18 December of 2017, after you received a letter from  
19 the Department of Justice; is that right?

20 A All of those things?

21 Q Yes.

22 A What we did in December and at -- what we

1 did in December is came up with a strategy on how  
2 to -- how to work through this process, working  
3 very much with Census, because I went to them and  
4 said, have we done this before -- you know, you  
5 always go back, have we done this before, how do  
6 you do it, what do we think about it? And, of  
7 course, the answer is no, this really -- there was  
8 not precedence on it.

9 And that's where we said, okay, at the  
10 top of the house has to have a legal review, a  
11 technical/operational review and then that leads  
12 to a policy decision or policy review.

13 And so we then said okay, if, in fact,  
14 the question needs to be to Congress, by law, on  
15 March 31st, which -- and not that I want you to  
16 think I'm a walking calendar, because I've already  
17 made mistakes -- but March 31st was the date that  
18 it has to legally be there, that happened to be  
19 Good Friday. So for courtesy, you would bring it  
20 to them on the Thursday. So we sort of walked  
21 back and said, what are we going to do over the  
22 next months?

1 Q Or did you?

2 A I don't recall.

3 Q Do you think you might have discussed  
4 with it Mr. Jarmin?

5 A We certainly laid out what events had to  
6 take place through next March, and we sort of  
7 looked at that big timeline of what had to happen.  
8 And when the conversations of the questions needed  
9 to get to Congress by the 31st, I can't recall if  
10 there was a discussion on that.

11 Q Let me be very clear. You testified a  
12 moment ago, I thought, that it was the  
13 Department of Justice letter in December that  
14 prompted you to call in Mr. Jarmin and others in  
15 the Census Bureau and ask for their input on the  
16 citizenship question, correct?

17 A It was that letter that -- that we then  
18 sat with the people from the Census Bureau to say,  
19 it's coming up in March now. We've got this  
20 letter. We need to address how do we do this,  
21 what is the process that would take place and the  
22 strategy around how to make this happen.



1 exhibit.

2 (Plaintiffs' Exhibit 9, Email, was  
3 marked.)

4 BY MR. GROSSI:

5 Q Exhibit 9.

6 Exhibit 9 is an email chain that begins  
7 on August 29th where Mr. Davidson wrote to  
8 Mr. Hernandez, Comstock, Uthmeier and other names  
9 that have been blocked out, as well as a copy to  
10 Ms. Teramoto.

11 A Excuse me. Are they other names or are  
12 they just simply the email addresses?

13 Q I'm not sure. I really don't know.

14 It says, "The Secretary asked to set up  
15 briefing" -- "a briefing on some key legal issues  
16 he is concerned about." And the overall subject  
17 line is census. "Can we get something on the  
18 books for next week when Izzy returns. I can't  
19 find Karen in the directory, but she should be  
20 included, as well." And then there is additional  
21 information about scheduling leading to an email  
22 from a Chelsey Neuhart -- haus to various people

1 indicating that she wanted to confirm that the  
2 attendees at the next census briefing regarding  
3 legal questions should be Ms. Teramoto,  
4 Mr. Hernandez, Mr. Comstock, Mr. Uthmeier,  
5 Mr. Davidson and you, Ms. -- Secretary Kelley.

6 Now, we have not been provided with any  
7 information about what the subject matter was,  
8 other than it has been produced in the case. And  
9 what I want to ask you is: Do you recall in late  
10 August 2017, attending a meeting where legal  
11 issues involving the census were discussed?

12 A No. I do not recall that.

13 Q Do you think it's possible --

14 A I do not remember is what I said. I  
15 apologize.

16 Q Is it possible that one of those legal  
17 issues was this question you mentioned about the  
18 legal implications of adding a citizenship  
19 question to the census?

20 MR. GARDNER: Objection. Form.

21 THE WITNESS: Sir, I don't remember the  
22 meeting. I don't know that the meeting got

1 cancelled, took place, whether I could be there or  
2 not be there. So for me to speculate, at all, as  
3 to what was discussed or not discussed would be an  
4 erroneous things. I just have no recollection of  
5 this whatsoever. And even if there was a meeting,  
6 did I get called to something -- I just don't  
7 know. I would be speculating if I said anything  
8 to this.

9 BY MR. GROSSI:

10 Q And you don't recall specifically on the  
11 last page, what legal issues -- key legal issues  
12 Secretary Ross was interested in pertaining to the  
13 census at about this time? Doesn't refresh your  
14 recollection?

15 A No, it does not, sir. It does not. I'm  
16 sorry. It does not.

17 Q Let's take the next one.

18 (Plaintiffs' Exhibit 10, Email, was  
19 marked.)

20 BY MR. GROSSI:

21 Q I marked as Exhibit 10, 9799 and 9800.  
22 It's an email sent to Karen Kelley on

1 December 5, 2017 from Mr. Willard. The subject is  
2 items to cover with Izzy. I'm just going to refer  
3 you to one portion of it. It says, "Karen, please  
4 find below and attached a list of items to cover  
5 with Izzy today."

6 And I'm going to direct your attention to  
7 the 11th numbered item on the second page, which I  
8 will read that says, Higgins amendment: House  
9 Rules committee considering today, at 4:00 p.m.,  
10 an amendment that would block all fiscal 2018  
11 funding for the 2020 decennial census unless the  
12 survey includes questions about residence,  
13 citizenship and immigration status. The amendment  
14 comes amid concerns that the 2020 census is  
15 already in danger of being underfunded, unquote.

16 Do you recall attending a meeting and  
17 discussing with Mr. Hernandez and others the issue  
18 of adding a census question to the 2020 census,  
19 either in context of the Higgins amendment or  
20 anything else in September 2017?

21 A Allow me to take a look at this email,  
22 please.

1 BY MR. GROSSI:

2 Q Sure. My question, again, is: Whether  
3 this refreshes your recollection that on or about  
4 September 5th, you were meeting with various  
5 people at the Commerce Department to talk about,  
6 among other things, an amendment that would block  
7 fiscal funding unless a citizenship question was  
8 added to the 2020 census?

9 A I do not recall this document, at all,  
10 but at the beginning, we were meeting with several  
11 people. And, in fact, you can see in here it  
12 says, "Izzy also confirmed that there is a 3:30  
13 p.m. with the Secretary to discuss the budget,"  
14 which I said has -- a big topic and one I was  
15 spending a lot of time on.

16 I -- I will tell you that there were a  
17 lot of topics on this discussion -- on this  
18 agenda, and I cannot confirm or deny that they  
19 took place. The meeting was scheduled once and  
20 then rescheduled, so I couldn't even tell you that  
21 this meeting actually took place, to my  
22 recollection. But I'm not saying to you these

1 would not have been topics we would have  
2 discussed.

3 Q You might have been discussing adding a  
4 citizenship question as of September of 2017?

5 A Well, if we went through this agenda and  
6 actually got through it all, we would certainly  
7 have been discussing the Higgins amendment, which  
8 would have made sense, because you would have been  
9 discussing topical news on the -- on the census.

10 Q And that would have a big impact on the  
11 census, right, in terms of its funding? That's  
12 what the message says.

13 MR. GARDNER: Objection. Lack of  
14 foundation.

15 THE WITNESS: Sir, I -- the last thing I  
16 want to do is be, at all, argumentative with you.  
17 But it says, "The amendment comes amid concerns  
18 that the 2020 census is already in danger of being  
19 underfunded."

20 So it sort of dissects those and says  
21 there is already a concern here and now this has  
22 come up.

1 BY MR. GROSSI:

2 Q Because the amendment would have not  
3 funded the census, at all, if it didn't have this  
4 question?

5 A It certainly would be a problem, wouldn't  
6 it?

7 Q Right. And do you remember discussing  
8 that issue?

9 A No. I do not. Do not.

10 Q Is there anybody on this email that you  
11 can identify as a member of the Census Bureau?  
12 Just a minute.

13 A Repeat your question, sir.

14 Q It's simply, are there any of the names  
15 on this as people who were aware of this meeting  
16 or attended this meeting who were members of the  
17 Census Bureau?

18 MR. GARDNER: Objection. Lack of  
19 foundation.

20 THE WITNESS: The memo came to two  
21 people, myself and Aaron Willard.

22 BY MR. GROSSI:

1 saying I wasn't there. I'm not denying it. I'm  
2 not confirming it. I'm saying I wasn't there, so  
3 I, therefore, cannot answer who was at the  
4 meeting.

5 BY MR. GROSSI:

6 Q Do you recall, at all, telling people  
7 such as Mr. Hernandez or Mr. Willard that if they  
8 were considering matters of great importance to  
9 the census, they should consult with Mr. Jarmin  
10 and other people at the Census Bureau?

11 A That question is out of context of this  
12 memo, but from August 21st when I showed up, we  
13 consulted and had communication and conversation  
14 all the time with the senior officials at the  
15 Census, Dr. Jarmin included. We were -- I said  
16 and we lived by we were going to live under  
17 the -- we were going to be very communicative and  
18 talk with them.

19 So your question was: Did I tell people  
20 of anything of importance with the census -- to  
21 talk with them? The answer is: We would have had  
22 that conversation.



1           Q    I'm sure. That's all I was trying to  
2   establish. That, as a general rule, a general  
3   policy, when issues of importance to the Census  
4   were developed by people of Commerce -- I'm  
5   distinguishing the superiors at Commerce -- your  
6   role was to tell those people to discuss it with  
7   the people at the Census Bureau, correct?

8           A    That would have been my policy.

9           Q    Yes. Right. But your best recollection,  
10   and from all that we can tell and from what  
11   Mr. Jarmin told us, you did not discuss adding a  
12   citizenship question with Mr. Jarmin and other  
13   people at the Census Bureau prior to  
14   December 2017; is that also your best  
15   recollection?

16           MR. GARDNER: Objection. Form.

17           THE WITNESS: My best recollection, which  
18   I've told you, is that I don't remember when I  
19   discussed that for the first time with the people  
20   at Census. You then indicated that Dr. Jarmin  
21   said -- you asked if I would say he was lying, I  
22   said absolutely not. I would not say that. But

1     though, is, simply, he's saying he's going to drop  
2     off some review materials, conveying that they  
3     were physical. Do you remember him doing that?

4           A     No. I do not.

5           Q     Can't help us, at all, about whether you  
6     ever saw a legal memorandum from him?

7           A     I cannot help you, at all.

8           Q     Now, before the break, we were talking  
9     about some documents that showed that Mr. Comstock  
10    was working with Mr. Ross to determine if the  
11    Department of Justice had any interest in adding a  
12    citizenship question. And what I'd like to  
13    determine is whether, in fact, you knew anything  
14    about that effort prior to the time that the  
15    letter came over from Justice in December of 2017.

16           MR. GARDNER: Objection. Form.

17           BY MR. GROSSI:

18           Q     So my question is: Did you know anything  
19    about an effort to get the Department of Justice  
20    to send such a letter?

21           A     I knew there were conversations between  
22    Commerce and Justice.

1 Q And did you know the substance of those  
2 conversations, even in summary form?

3 A That it was about the citizenship  
4 question, yes.

5 Q Okay. And that Secretary Ross was hoping  
6 to get the Department of Justice to support a  
7 request for such information, correct?

8 A And that's where you're taking it to I --  
9 those are details that I do not know.

10 Q You just know he was discussing it with  
11 the Department of Justice?

12 A Yes.

13 Q And you didn't have anything to do with  
14 any of those discussions; is that right?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No.

17 Are you asking me if I participated in  
18 any of those discussions? The answer is:  
19 Absolutely not.

20 BY MR. GROSSI:

21 Q And he didn't brief you of any of those  
22 discussions in the fall of 2017?

1     been a cursory conversation with the  
2     Census Bureau. I do not recall. I know when it  
3     was -- when we were clear there was going to be a  
4     letter, that I spoke with Dr. Jarmin and others at  
5     the Census.

6           Q     What about at the Department of  
7     Homeland Security, do you recall being told that  
8     Secretary Ross and Mr. Comstock and others were  
9     attempting to elicit their support for a  
10    question -- citizenship question?

11          A     No. I do not know anything about that.

12          Q     Did anybody --

13          A     I'm not aware of that.

14          Q     Nobody ever told you of an interest in  
15    the Department of Homeland Security about having  
16    Census include a citizenship question; is that  
17    right?

18          A     Not to my recollection, no.

19          Q     Okay. And you don't recall hearing,  
20    around Thanksgiving, around the end of November,  
21    that Secretary Ross had finally lost patience with  
22    the Department of Justice and needed to get

1 something from them to justify a citizenship  
2 question? Does that ring a bell with you?

3 A No.

4 Q You never talked with Secretary Ross in  
5 November about his frustrations with the  
6 Department of Justice; is that right? Or is it  
7 possible?

8 MR. GARDNER: Objection. Form.

9 THE WITNESS: Sir, you are -- I could  
10 have been briefed. I could have been told that  
11 there was frustration. We don't know if we're  
12 getting a letter, but it was not -- it was not at  
13 the top -- if I can use the -- you know, the old  
14 -- front -- front burner, it was not a  
15 front-burner issue. We had front-burner issues to  
16 get ready for the '18 end-to-end test. We, at  
17 that point, had a -- were in a situation where  
18 AT&T protested the group that was using the  
19 handhelds. So if we didn't get through the  
20 protest, we wouldn't have handhelds for the '18  
21 end-to-end test. So I apologize, but those were  
22 top-of-the-house issues to me. That -- we were

1 dealing with those. We had so many fires to be  
2 putting out on those kinds of issues that were  
3 happening and the time frame prep -- getting ready  
4 for the end-to-end test in April, those were the  
5 topics we were -- I was spending my time on. So  
6 if somebody over here said we're working on the  
7 citizenship question and the Secretary is  
8 frustrated, I would not know it. It would not be  
9 top of my mind.

10 BY MR. GROSSI:

11 Q Were you surprised, though, they wanted  
12 to add a question with all the rest of what was  
13 going on and the need to test that question ahead  
14 of time?

15 A Sir, you already asked me earlier. This  
16 question was not for the end-to-end test.

17 Q Okay.

18 A We were prepping up for the end-to-end  
19 test, which would then be, obviously, into the  
20 2020 census.

21 Q But you said earlier you were concerned  
22 or it was a difficult thing, because when you

1 BY MR. GROSSI:

2 Q Right. Did you express any frustration  
3 to anyone that you had not focused on this issue  
4 until the mid-December, period?

5 A Not to my recollection.

6 Q Okay. Did any of the people at the  
7 Census Bureau say that this was a very short time  
8 frame in order to properly vet and test a new  
9 question?

10 A Not that I recall.

11 Q Let's have this marked.

12 (Plaintiffs' Exhibit 13, Email, was

13 marked.)

14 BY MR. GROSSI:

15 Q I'm marking as Exhibit 13.

16 MR. GARDNER: Is the second page supposed  
17 to be blank -- Peter, is the second page supposed  
18 to be blank?

19 MR. GROSSI: Yes.

20 THE WITNESS: Second page blank?

21 MR. GARDNER: Yes.

22 BY MR. GROSSI:

1 Q What I've marked as Exhibit 13 is an  
2 email from Mr. Jarmin to various people identified  
3 by email addresses at the Census saying, as of  
4 Friday, December 15, 2017 that he needed to huddle  
5 with that staff and propose a time of 8:30 the  
6 following morning -- the following Monday, which  
7 would have been December 18th.

8 Do you recall Mr. Jarmin -- Dr. Jarmin  
9 telling you that he would want to involve a number  
10 of technical experts in evaluating the request to  
11 add a citizenship question to the 2020 census?

12 A Yes.

13 Q What did he tell you?

14 A He told me he was going to get the team  
15 together and come up with it.

16 Q Did he express surprise at that point  
17 because he had not heard previously that this was  
18 a possibility? What do you remember about that  
19 meeting or phone call?

20 A Prior to -- so if you go down to this  
21 December 15th bottom email, if you --

22 THE WITNESS: Does everybody have this



1 paper?

2 Okay. If you go down to that  
3 December 15th, what had happened was the  
4 Department of Justice said they were sending a  
5 letter, a letter was forthcoming. And I -- I  
6 called -- I told the Census that a letter was  
7 forthcoming, but they did not get it because they  
8 sent it to the Department -- excuse me -- the  
9 Census Bureau, not the Department -- they sent it  
10 to the Census Bureau with a stamp, in the mail, in  
11 the postal. Somebody, as a courtesy, legal to  
12 legal, or whatever, as a courtesy, sent a copy to  
13 the Department. So I asked that it got sent to  
14 Dr. Jarmin and Enrique Lamas, who is also a  
15 doctor. I don't want to be rude there.

16 So I asked that that be sent to them. So  
17 they -- before -- you said were they surprised, so  
18 before that, they knew something was coming. This  
19 was what was sent with the -- with the note.

20 I -- I -- I'm -- I'm just reading it.  
21 I'm like a little confused because it says, "I  
22 understand the Department of Justice sent the

1 attached letter." But there's no attachment, and  
2 this is a blank page, so maybe there's a --

3 Q Well, I can give you the letter --

4 A No. No. No. But I -- it was  
5 attached --

6 Q Right.

7 A It was attached to this.

8 Q Right.

9 A And it's just not on here --

10 Q So the situation was --

11 A So I then sent them -- I had asked  
12 Mr. Uthmeier to send them the letter, so they then  
13 had the first chance to read it. But they knew it  
14 was coming, so there was no shock in law [sic] in  
15 that conversation.

16 He said -- we talked. He said, fine.  
17 Let me get a group together. Let us think about  
18 it. And we said at that point -- we had a  
19 conversation between Ron Jarmin, Enrique Lamas and  
20 myself -- and I don't want to tie it to any time  
21 or date on this letter -- but at the time, I said  
22 what -- I said, tell me historically what happens,

1 what do we do here? You're the technical experts.  
2 Well, really, a question hadn't been added, but  
3 they said the fundamental things that need to take  
4 place is there needs to be a legal review, a  
5 technical operational review and a policy decision  
6 review from that. And that's the guiding  
7 principles in how we had to work on it.

8 And so I said, fine, let's get thinking  
9 about this, and we need -- you need to do your  
10 thing as the experts at the Census. And from my  
11 position, as a convener, if you will, having that  
12 we need to put a -- a strategy, as I said earlier,  
13 in place, so that we can back up to the date of  
14 the 31st of March, which was very much what we did  
15 on many things.

16 There were other decisions that the  
17 Census had to make by certain dates, such as race  
18 and ethnicity, and other decisions that needed to  
19 be done, such as where to count certain -- certain  
20 groups, and all of those things would have a date  
21 they need to be done by here, how do you back up  
22 so we can get all the information? So this took

1 on the similar process.

2 Q And who --

3 A Does that help answer your question?

4 Q Yes. Thank you.

5 And who was it that said there should be  
6 a legal review?

7 A I asked the Census, and it was a  
8 conversation I had with the Census. So I don't  
9 remember exactly who at the table said this is  
10 what needs to happen, and that's when I said,  
11 okay, so that's the guiding principles that we  
12 should work from.

13 Q And I want to flesh that out. What sort  
14 of legal review do you recall them discussing?  
15 What needed to be reviewed? What aspects of  
16 legalities?

17 A The rule of thumb on -- at the  
18 census -- and, again, I'm not giving  
19 you -- I'm -- I'm not a Census employee for  
20 30 years, and I'm not a technical expert on these  
21 things, and I am not a lawyer, okay.

22 So in a very layman's terms, the rule of

1 thumb when we looked at legal reviews was two  
2 things. Number 1, is there a statutory reason or  
3 a program-added reason that this question that  
4 this -- that this should happen? And that was  
5 some of the things we talked about.  
6 Whether -- and I am not a lawyer, so handing it to  
7 legal guys -- if there was further review they  
8 wanted to do, but that was two things that was --  
9 that were always important.

10 Q And who made that legal review at Census  
11 or for Census?

12 A That was done by the legal team, and I  
13 know there were a number of lawyers on it. I  
14 can't speak to all of them.

15 Q Who? Give us the name of the people you  
16 recall.

17 A I just said there was a number of people  
18 involved, and I can't speak to all of them.

19 Q But do you know any of them?

20 A Sure. Some of them would have included  
21 Barry Robinson, who was with Census.  
22 Melissa Creech -- Creech, I think is how you

1           A     They were absolutely involved. To my  
2 knowledge sound -- absolutely sounds --

3           Q     And you saw copies of those memorandum?

4           A     No. I did not. Well, I did -- I saw  
5 some documents. So I -- but I -- I was not an  
6 expert on those documents.

7           Q     Okay. Now, we're going to go right now,  
8 in a few minutes, into the technical aspects that  
9 were mentioned, and I think you're going to  
10 hear -- see a number of memoranda in January and  
11 February of 2018.

12                     With that as background, do you remember  
13 when you saw or knew about the legal reviews? Was  
14 it before, in the same time frame or after you  
15 knew about the technical reviews?

16           A     I would -- I would want to leave the  
17 group with the understanding that there were  
18 paths -- two simultaneous paths going on. There  
19 was a legal review happening. There was a  
20 technical review happening. And that was  
21 informing the policy review.

22           Q     And you had understood determining

1 whether it was statutorily mandated or appropriate  
2 was something that was normally done when a new  
3 census -- citizenship question was asked -- I'm  
4 sorry -- when a new census question was asked?

5 A That was my understanding from the  
6 technical experts at the Census.

7 The -- it was also my understanding that  
8 the Census lawyers and the Department lawyers  
9 worked together.

10 Q I'm going to mark as Exhibit 14 another  
11 email from the same day, the same time.

12 (Plaintiffs' Exhibit 14, Email, was  
13 marked.)

14 BY MR. GROSSI:

15 Q And this is from Enrique Lamas. He is  
16 the assistant director of the Census, correct?

17 A He is the acting assistant director, sir,  
18 to be technical.

19 Q And it's to, again, Mr. Willard, that  
20 we've talked about, but also cc's to Mr. Jarmin,  
21 and he's responding to an earlier email from 12:01  
22 from Mr. Willard saying, "Hey, guys. Karen got a

1 call from the Secretary and has an update for all  
2 of you. If you can step away from the FESAC" --  
3 F-E-S-A-C -- "it is regarding a letter from the  
4 Department of Justice," unquote.

5 Do you recall getting a call from  
6 Secretary Ross presumably either on or shortly  
7 before December 15th?

8 A I don't recall what this is about. I  
9 don't recall what this is about, but --

10 Q Well, it says it is regarding a letter  
11 from DOJ.

12 Do you see that?

13 A And if you see the page before, which  
14 your handed me, and the bottom, which I  
15 articulated to you that I asked James Uthmeier  
16 that -- and I told you -- it doesn't say it  
17 here -- but that James sent them the letter that  
18 afternoon, the -- the problem with making  
19 assumptions or speculating is that I could be  
20 totally wrong. So I am -- I -- I don't  
21 necessarily want to do that.

22 But if I were to be making an educated



1 guess, would you tolerate an educated guess --

2 Q Yes, please.

3 A -- that could be wrong?

4 I learned we had the letter. I said  
5 let's get those guys, but they're in the FESAC  
6 meeting, which is federal economic statistical  
7 committee, so it's an important committee, so I  
8 didn't want to -- if they could come out, and that  
9 we would -- we got the letter, we will send it to  
10 them.

11 That would be me taking a -- seeing these  
12 things and saying -- but do I specifically  
13 remember this? No, I can't tell you I do.

14 Q Okay. That was helpful. So what you're  
15 saying is you do -- do you remember calling them  
16 out of a meeting that was important?

17 A No. That's -- that -- that says if you  
18 can step away the FESAC. That means if there's a  
19 break or whatever. I am extremely respectful of  
20 these guys, and I think you've met Dr. Jarmin and  
21 you've met Dr. Abowd. These guys are brilliant.  
22 They are hard working. They are incredible. I

1 don't call them out of anything. I say when you  
2 can speak to me, I appreciate. No. No. No. I  
3 would never call anybody out of anything, sir.

4 Q So this was a relatively unusual thing,  
5 for you to be pressing on their time in this way,  
6 right?

7 A Yes.

8 Q What was it that Secretary Ross told you  
9 was so important?

10 A As I said, sir, I don't remember -- and,  
11 also, I didn't write this. So people love to use  
12 the Secretary's name in the vernacular of, the  
13 Secretary called. It could have been the  
14 Secretary's office. It could have been somebody  
15 in connection. So people love to use that,  
16 Number 1. Whether the Secretary called or not, I  
17 can't speak to that, okay.

18 And all I'm trying to do is say from this  
19 document, because I generically remember what  
20 happened, that we got the letter. They did not  
21 get the letter until later, because it came with a  
22 post stamp on it, and I felt very strongly as soon

1 A I do not recall.

2 Q Okay. But what you did was you turned to  
3 your experts in the Census Bureau, correct?

4 A That is correct. Because what I felt  
5 was -- you are characterizing this as the  
6 Secretary put pressure on me to make this a  
7 priority at the Census. Once I told the Census  
8 this letter was somewhere in the works and they  
9 hadn't got it yet, it was priority for them to get  
10 it, and it was priority to service the  
11 Census Bureau and --

12 Q And that's --

13 A -- the executives.

14 Q And that's what, then, you did?

15 A That's what I did.

16 Q And in January, February, March, you  
17 worked with the Census Bureau people to prepare  
18 drafts and respond to various questions of  
19 Secretary Ross concerning the addition of the  
20 citizenship question, correct?

21 A Correct.

22 Q Now, I want to --

1           A    I want to be sort of -- yes. But as in  
2 my role, what I did is I sort of was the convener,  
3 and I got a group together to say, Census said  
4 these are the three aspects we need to deal with.  
5 So we know we've got legal people. We know we've  
6 got Census people, and we know we've got policy  
7 people so that we can go down this path. It  
8 becomes very iterative and evolutionary at that  
9 point. So we put a team together that could look  
10 at these things.

11           Q   And as the Under Secretary responsible  
12 for the Census Bureau, and someone who had told  
13 Congress that you wanted to make a complete and  
14 accurate 2020 census a high priority, are you  
15 saying that you did not feel it was your place to  
16 make a recommendation or conclusion about whether  
17 the citizenship question should be added?

18           A   That decision was a decision that the  
19 Secretary makes. It was absolutely my job to make  
20 sure he got a full breadth of information and  
21 opinions. There were certain decisions that the  
22 director made. And so we'd have meetings, and I

1 would not give Ron Jarmin -- excuse me --  
2 Dr. Jarmin my opinion on what he should do. It  
3 was his decision to make. It was my position  
4 to help and facilitate.

5 Q Right.

6 A So there was all kinds of decisions that  
7 needed to be made by all kinds of people, and I  
8 can promise you I didn't tell you -- the  
9 technology people how to do their jobs either.

10 Q Okay. Let me go through some documents  
11 that I think I saw you were involved in. I just  
12 want to get your recollection of how that process  
13 proceeded.

14 A Great.

15 Q We're marking as Exhibit 15 a one-page  
16 email Bates number 9679.

17 (Plaintiffs' Exhibit 15, Email, was  
18 marked.)

19 THE WITNESS: I'm sorry.

20 BY MR. GROSSI:

21 Q Now, this is an email chain, on the  
22 bottom, Mr. Jarmin wrote to Karen, "Happy New

1 Year. I'd like to discuss the following with you  
2 as soon you have a chance." And the third item  
3 mentioned is strategy to the Department -- to the  
4 DOJ letter on citizenship. And then that is  
5 followed by an email from the name is blacked out,  
6 however, the initials KDK are at the bottom of  
7 that email, saying, "Perfect. Let's discuss  
8 tomorrow." Which I guess would have been the 3rd  
9 of 2018 -- 3rd of January 2018.

10 Despite the fact that someone has blacked  
11 out the name, can you confirm that is your email?

12 A Again, can I confirm that I wrote this  
13 email on January 2nd of 2018, that many months  
14 ago? The answer is no, I can't confirm that.  
15 Somebody could have written this. But would I  
16 suspect and would I -- would I say yes, most  
17 likely, that is mine, that --

18 Q Right.

19 A And I do sign things by KDK, which are my  
20 initials. So I have no problem going forward.  
21 But I cannot promise you absolutely, categorically  
22 that I wrote this email.

1 That's what the memo says right here.

2 BY MR. GROSSI:

3 Q But you remember this information being  
4 conveyed to you, correct?

5 A Sir, are what you asking me, do I  
6 remember me getting a memo where these  
7 alternatives were in here and these numbers were  
8 herein?

9 Q That's one question, yes. Do you  
10 remember that?

11 A Yes. I remember that.

12 Q And do you remember discussing it with  
13 them?

14 A We discussed it on multiple -- multiple  
15 occasions.

16 Q Okay. Let me ask this: In all the  
17 time -- and now I'm taking it all the way through  
18 the March 26th final decision -- did the Census  
19 experts ever conclude that there would not be  
20 additional costs to adding -- as a result of  
21 adding the question on citizenship?

22 A The discussions we had went not only with

1 a complete, accurate and the cost, and yes, we did  
2 say that there would be an additional cost.

3 Q And they always maintained that view, to  
4 this day, as far as you?

5 A As far as I know.

6 Q Okay. That's what I'm looking for. I'm  
7 looking for them ever coming to you and saying,  
8 you know, Under Secretary, we were wrong?

9 A But they didn't know it. They didn't  
10 know it. It was what they thought. They did not  
11 know what would happen. We won't know the answer  
12 to that until 2020.

13 Q And you knew that the Census people were  
14 providing you with their best estimate, correct?

15 A They were certainly doing -- coming up  
16 with their conclusion.

17 Q We don't know how bad it might be; is  
18 that right?

19 A We -- we cannot -- you and I cannot  
20 speculate on the future.

21 Q But the Census experts can give you and  
22 Secretary Ross their best estimates?



1 A I'm sorry?

2 Q You have to -- you have to say yes for  
3 the record.

4 MR. GARDNER: She's asking you to repeat  
5 the question.

6 THE WITNESS: Sorry. Could you repeat  
7 the question? I'm sorry.

8 BY MR. GROSSI:

9 Q Oh. I'm sorry.

10 Dr. Jarmin asked these various people to  
11 be involved, to prepare a memorandum for him on  
12 this issue?

13 A That is my assumption.

14 Q And Dr. Jarmin understood that he should  
15 enlist the best people at the Census Bureau?

16 MR. GARDNER: Objection. Calls for  
17 speculation.

18 THE WITNESS: I can't --

19 MR. GARDNER: No foundation.

20 THE WITNESS: I can't tell you what  
21 Dr. Jarmin was thinking.

22 BY MR. GROSSI:

1 Q Did you ever say to Dr. Jarmin, why  
2 didn't you include, Mr. X, Ms. X?

3 MR. GARDNER: Objection. Form.

4 THE WITNESS: Dr. Jarmin is an -- is the  
5 direct- -- is the acting director of the Census.  
6 I did not question him. I asked him if he would  
7 put together the team he wanted to put together.

8 BY MR. GROSSI:

9 Q Okay. Let me ask you this: Are you  
10 satisfied that he did a good job selecting the  
11 right people and coming up with a competent  
12 assessment, or not?

13 A The Census did the very best job they  
14 could on this.

15 Q Now, it goes on on the next page, 5474,  
16 again, to say with respect to Alternative B,  
17 quote, it would lower -- I'm sorry -- it would  
18 result in lower quality enumeration date, unquote.

19 Do you remember that being the view of  
20 the Census experts as of early January 2018?

21 A At this point in the decision, that was  
22 their assessment.

1 Q Did they ever change that assessment,  
2 which is specifically that adding the citizenship  
3 question would result in lower quality enumeration  
4 data?

5 A I do not believe so.

6 Q And then it goes on to say, that they  
7 also estimate that asking the citizenship  
8 question, quote, would result in 154,000  
9 fewer -- and they emphasize that  
10 word -- enumerations. This is also a lower bound  
11 estimate on the loss of accuracy, unquote.

12 Let's take them in pieces. Did -- have  
13 the Census Bureau experts ever changed their  
14 opinion that asking the citizenship question would  
15 result in 154,000 fewer correct enumerations?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 THE WITNESS: Conceptually, I -- they  
19 have not, but this has evolved, and the numbers  
20 have evolved. And I don't want to get caught  
21 saying absolutely that number did not change over  
22 three months and a whole lot of work, so please

1 don't put me in that box.

2 BY MR. GROSSI:

3 Q Okay. We'll look at this. I don't mean  
4 to do that. We'll look at the subsequent ones.

5 Do you also remember that when they made  
6 these estimates, they were emphasizing that this  
7 was the lower bound, which is to say it could have  
8 been worse?

9 A It says it right there. This is the  
10 lower bound estimate.

11 Q And they've never changed their view  
12 about that, have they?

13 MR. GARDNER: Objection. Lack of  
14 foundation.

15 BY MR. GROSSI:

16 Q To your knowledge, as the person who  
17 supervised their work, they never changed that to  
18 you, correct?

19 A Not to my knowledge.

20 Q Okay. Now, let's go to the last page,  
21 two points here. At the very beginning, it says,  
22 "Alternative C delivers higher quality data for

1 Alternative B for DOJ's stated uses," unquote.

2 Now, let's just change the nomenclature.

3 Alternative C was a program of using

4 administrative data and not asking the citizenship

5 question, correct?

6 A Correct.

7 Q Alternative B --

8 THE WITNESS: Correct. I said correct,

9 everybody.

10 BY MR. GROSSI:

11 Q Alternative B was asking the citizenship  
12 question, correct?

13 A Correct.

14 Q So it was the view of the Census experts  
15 that as between the two, using this administrative  
16 data without a citizenship question or asking the  
17 citizenship question, it would be preferable in  
18 terms of getting quality data for DOJ's stated  
19 uses to go with the administrative data, correct?

20 MR. GARDNER: Objection.

21 Mischaracterizes the document.

22 BY MR. GROSSI:

1 Q That's how you understood it, right?

2 A Please repeat your question, sir.

3 Q Yeah.

4 A You -- you -- you --

5 Q Fair enough.

6 A You're jumbling it. And I will accept  
7 this document as it is written here.

8 Q Okay. I just want to be clear, because  
9 we're getting Alternative C and B here.

10 What they were telling you --

11 A And A.

12 Q And A, too.

13 But what they were telling you here was  
14 that as between --

15 A At this junction in time --

16 Q Right.

17 A -- when they wrote this memo --

18 Q They thought it would be better to use  
19 administrative data and not ask the citizenship  
20 question from the standpoint of the  
21 Department of Justice quality data, correct?

22 A It says right here, "Alternative C even

1 better meets DOJ's stated use."

2 Q Than Alternative B, right?

3 And they've never changed their view on  
4 that either, have they?

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 THE WITNESS: Not to my knowledge.

8 BY MR. GROSSI:

9 Q Okay. And then it comes down to the  
10 recommendation, and they say Alternative A isn't  
11 costly and doesn't harm the count, but then  
12 referring specifically to the idea of adding or  
13 not, it says, "Alternative B better addresses the  
14 DOJ's stated uses. However, it is very costly and  
15 does harm the quality of the census count by  
16 increasing erroneous enumerations," and then as  
17 you just said a moment ago, they also said,  
18 "Alternative C even better meets DOJ's stated  
19 uses."

20 Let me take each little piece, all right.  
21 As the Census -- have the Census experts ever  
22 changed their view that Alternative B is very

1     costly?

2             MR. GARDNER:   Objection.   Lack of  
3     foundation.

4             THE WITNESS:   Not to my knowledge.

5     BY MR. GROSSI:

6         Q     Have they ever changed their view that  
7     Alternative B, adding the question, harms the  
8     quality of the census count by increasing  
9     erroneous enumerations?

10            MR. GARDNER:   Same objection.

11            THE WITNESS:   Not to my knowledge.

12     BY MR. GROSSI:

13         Q     Have they ever changed their view that  
14     Alternative C, using administrative data without a  
15     question, even better meets DOJ's stated uses?

16            MR. GARDNER:   Same objection.

17            THE WITNESS:   Not to my knowledge.

18     BY MR. GROSSI:

19         Q     Have they ever changed their view that  
20     Alternative C, administrative data, is  
21     comparatively far less costly than Alternative B?

22            MR. GARDNER:   Same objection.



1 THE WITNESS: Not to my knowledge.

2 BY MR. GROSSI:

3 Q And then they say, "For these reasons, we  
4 recommend Alternative C, using administrative  
5 records without the citizenship question for  
6 meeting the Department of Justice's data request."

7 Have they ever changed their final  
8 recommendation to use administrative data without  
9 a citizenship question additional rather than  
10 adding such a question? Have they ever changed  
11 their recommendation in that respect?

12 MR. GARDNER: No objection.

13 THE WITNESS: Not to my knowledge.

14 BY MR. GROSSI:

15 Q Okay.

16 MR. GARDNER: Tell you what, we've been  
17 going a long time. Why don't we go off the record  
18 and grab lunch?

19 MR. GROSSI: I think this is a good time.  
20 I agree.

21 VIDEOGRAPHER: This concludes Media Unit  
22 Number 3. Time on the video is 12:34 p.m. We are

1 not give an opinion on C or A or B. I did not do  
2 that. It is a misrepresentation of what I said.  
3 It could be a confusion or it's a game of  
4 telephone tag, because it went from me to somebody  
5 else. I can't speak to it.

6 Q Okay. Is that because you never took any  
7 position on how the citizenship issue should be  
8 handled?

9 A I never took a position on how the  
10 citizenship issue should be handled.

11 Q So if Dr. Jarmin testified, as he did,  
12 that you never disagreed with the recommendations  
13 of the experts at the Census Bureau to use  
14 administrative records rather than a citizenship  
15 question, you're not contradicting that testimony  
16 in any way?

17 A I didn't take a stance. So I didn't  
18 agree or disagree.

19 Q Okay. Fair enough.

20 Now I'd like to talk about a little bit  
21 of a different topic. Let's mark -- I'm marking  
22 as Exhibit 18 some emails where the Bates number

1 begins 5489 and runs to 5491. The top email being  
2 an email from Dr. Jarmin 1/3/2018 at 6:55 p.m.  
3 (Plaintiffs' Exhibit 18, Email, was  
4 marked.)

5 BY MR. GROSSI:

6 Q Okay. Now, Secretary Kelley, I think you  
7 testified in words or substance before the break  
8 that you viewed your job primarily as facilitating  
9 and making sure that the best possible people at  
10 Census focus on this particular issue of adding  
11 the citizenship question; is that right?

12 A I -- I said that I felt it was my job to  
13 convene and organize and work with Census to put a  
14 strategy in place for the overall timeline, as  
15 well as provide the Secretary with the best  
16 information for him to make a decision.

17 Q Okay. And this was specifically in the  
18 context of a request that was received in December  
19 from the Department of Justice about their needs  
20 for certain data, correct?

21 A Correct.

22 Q Okay. Did you also feel that as part of

1 your job, it was important to make sure that your  
2 folks in the Census Department were talking  
3 productively with the appropriate people in the  
4 Department of Justice about what they needed and  
5 how they could best -- how Census could best serve  
6 their needs?

7 A Quite frankly, the suggestion of a  
8 meeting between Census and DOJ came from Census.  
9 In one of our conversations, as we were going  
10 through strategies and timelines, we talked about  
11 what would you normally do when this comes up, how  
12 would you normally handle it? And they said they  
13 would try to set up a meeting with the agency or  
14 department or whatever it may be that wanted the  
15 information and see -- you know, fine tune and  
16 discuss and those kinds of things, and I said  
17 super.

18 Q Good. I mean, and someone is asking  
19 you --

20 A I don't know if I actually said super. I  
21 want to be really clear.

22 Q That's okay.

1     happening. I'm talking to the Census. We're  
2     saying what do we do, what's the strategy? They  
3     say we're going to call -- and I support that  
4     decision, if that's what they want to do and have  
5     that meeting.

6     BY MR. GROSSI:

7         Q     Okay.

8         A     But I'm not hoping and -- you know --

9         Q     Poor choice of words. I'm sorry.

10             Let's go over the particulars here.

11     Let's go to the last page -- actually, take a look  
12     at the bottom of 5490.)

13         A     Got it.)

14         Q     And it indicates that Director Jarmin, on  
15     Friday the 22nd of December, is sending an email  
16     to Arthur Gary, who is later identified as someone  
17     at the Department of Justice, and the subject is  
18     the request to reinstate the citizenship question  
19     on the 2020 census. Dr. Jarmin writes -- first,  
20     he thanks him for the letter of December 12th  
21     about the request by the Department of Justice,  
22     and then says the Bureau is fully supportive of

1 working with Justice.

2 And then says, quote, to that end, I  
3 directed staff to review all possible ways to  
4 address the needs expressed in the letter. They  
5 have now briefed me, and their findings suggest  
6 that the best way to provide P.L. 94 block-level  
7 data, with Citizen Voting Population By Race and  
8 Ethnicity would be through utilization of a linked  
9 file of administrative and survey data the  
10 Census Bureau already possessed. This would  
11 result in higher quality data produced at lower  
12 costs.

13 Do you see that?

14 A I see.

15 Q And that's what we had referred to in the  
16 Abowd memo that refers to as Alternative C,  
17 correct?

18 MR. GARDNER: Objection. Lack of  
19 foundation.

20 THE WITNESS: It would appear that way.

21 BY MR. GROSSI:

22 Q Okay. And then to follow the train,

1 working backwards, very quickly, on the afternoon  
2 of December 22nd, Mr. Gary, who's identified as  
3 the general counsel of the justice management  
4 division of the Department of Justice, writes back  
5 to Dr. Jarmin saying, "Thank you. We look forward  
6 to meeting you and your team in early January,"  
7 since now we're pretty much into the Christmas  
8 season.

9 And then there is that break, and on  
10 January 2nd, Dr. Jarmin writes back to Mr. Gary  
11 and asks him if late the following week would work  
12 for a meeting. And then Mr. Gary quickly responds  
13 back and says, "It should work fine. Let me get  
14 back to you."

15 And then on the very top, on January 3rd,  
16 Dr. Jarmin writes to Mr. Gary and says, quote, I'm  
17 bringing technical, program and legal folks. It  
18 would be good if some technical folks on the DOJ  
19 side were there so we can ensure we understand and  
20 can meet your requirements, unquote. And then he  
21 suggests a couple different days.

22 Were you aware at about this time that

1 Dr. Jarmin was trying to set up a meeting with the  
2 Department of Justice including their technical  
3 and program people?

4 A As I indicated before, I knew he was  
5 setting up a meeting. The full compliment of  
6 staff he was bringing, I would not have  
7 questioned, and I'm not sure I knew or did not  
8 know, but --

9 Q Now, in fact, the meeting never took  
10 place, right?

11 A No. The meeting did not take place.

12 Q Why?

13 MR. GARDNER: Objection. Calls for  
14 speculation. Lack of foundation.

15 BY MR. GROSSI:

16 Q Well, you would know why, wouldn't you?  
17 You were involved in hoping that -- or planning  
18 that Dr. Jarmin would set it up, right?

19 MR. GARDNER: Objection. Form.  
20 Objection. Mischaracterizes witness's prior  
21 testimony.

22 THE WITNESS: Again, Dr. Jarmin told me



1 he was going to set up the meeting. I did not get  
2 involved in helping him plan to do that. I  
3 just -- he said he was going to set up the  
4 meeting, I said good. I support that. That makes  
5 sense. Great. So that is that issue.

6 Do I know that the meeting did not take  
7 place? Yes, I do know the meeting did not take  
8 place.

9 BY MR. GROSSI:

10 Q And do you know why?

11 A It was under -- my understanding that the  
12 Justice came back and said we really don't need to  
13 meet. We do not need to meet. Our request is  
14 what we've got in the letter, is the written  
15 request.

16 Q Basically, they didn't even want to  
17 discuss the use of administrative data?

18 A That's exactly right. And we had seen  
19 that before in a couple other examples. Where we  
20 wanted to meet with OMB on a topic, and they said,  
21 no, what we've given you is what we've got, so we  
22 don't need to meet. I've seen that happen before.

1     that I would -- I can't personally say I remember  
2     this agenda on January 11th. I don't really even  
3     know if I remember January 11th, but this would be  
4     a typical agenda of the topics that now are  
5     topical that we need to discuss.

6           Q     I take it you don't remember anybody  
7     saying that the citizenship question should be  
8     added at this meeting?

9           A     I do not remember that, but I do not  
10    remember.

11          Q     Okay. Let's go on, now, to the next one.

12                     (Plaintiffs' Exhibit 21, January 9, 2018  
13    memorandum, was marked.)

14    BY MR. GROSSI:

15          Q     All right. I'm marking as Exhibit 21 a  
16    memorandum and the Bates number is 1277 to 1285,  
17    and it indicates it's dated January 9, 2018. It  
18    states to be a memorandum for Secretary Ross that  
19    has been transmitted from Dr. Abowd through  
20    Enrique Lamas, the acting deputy director, and  
21    then Dr. Jarmin, the acting director -- or the  
22    director, and then you, now performing the duties

1 of deputy secretary.

2 Before we start, let me just ask you:  
3 You assumed acting deputy secretary role in  
4 November of 2017?

5 A Yes. I just want to clarify one thing,  
6 and for those that do know this or don't know  
7 this, there is in government -- and I'm new to  
8 government -- a distinct difference between the  
9 acting and the person who is performing the  
10 nonexclusive functions and duties. I just want to  
11 be very clear that in any colloquialism, if  
12 somebody calls me the acting, I am not the acting  
13 deputy secretary. I am performing the  
14 nonexclusive functions and duties of the deputy  
15 secretary.

16 Q And so for a single salary, you're doing  
17 two jobs. You are performing the nonexclusive  
18 duties of secretary and you're also the  
19 Under Secretary; is that right?

20 A Yes, I am.

21 Q Well, I think that you should get a  
22 raise.

1           A    I am not an expert and technical genius  
2           on this -- what is the actual technical, but this  
3           goes through our exec seg process and all the  
4           people that should know and this is the process.

5           Q    As a practical matter?

6           A    As a practical matter, yes.

7           Q    Fair enough.

8           A    Yes.

9           Q    And you sent this to Secretary Ross?

10          A    Yes.

11          Q    Now, I want to discuss this document in  
12          some detail, and you can read the whole thing or  
13          I'm going to direct your attention to specific  
14          questions, and I think they'll be in fair context.

15          A    Okay. May I just say that this memo was  
16          from Dr. Abowd and it came through myself,  
17          Dr. Jarmin and Dr. Lamas. So you said you sent  
18          this. This actually was sent through the three of  
19          us, okay.

20          Q    And all of you concurred it ought to go  
21          up to Secretary Ross?

22          A    Indeed.

1 Q Just to get the nomenclature correct  
2 again, on the first page, the memo states, as  
3 we've previously discussed, that the Census  
4 experts had discussed three alternatives --

5 A Excuse me, sir. If you would not mind,  
6 we've said prior to this that there have been many  
7 iterations, many versions, many everything. If  
8 you wouldn't mind, I would like to take a minute  
9 to look at this, as we are going to go through  
10 this document.

11 Q Sure.

12 A Thank you.

13 Q Ready to go. Okay. Secretary Kelley, in  
14 this memo that we've marked as Exhibit 19 --

15 A 21.

16 MR. GARDNER: 21.

17 BY MR. GROSSI:

18 Q Oh, I'm sorry. 21. Thank you.

19 The first page is sort of a summary of  
20 the recommendations, and I want to ask you about a  
21 couple of them. The Census experts begin by  
22 saying that the Department of Justice has

1 requested block-level citizen voting age  
2 population estimates.

3 Do you see that?

4 A Yes.

5 Q That's what we've been referring to as  
6 the DOJ request, correct?

7 A Correct.

8 Q And then they say, as they did in the  
9 earlier versions, the prior memos, that they  
10 considered three alternatives, A, no change in  
11 data collection. That is no additional  
12 citizenship question, correct?

13 A Correct.

14 Q And B would be adding the question to the  
15 2020 census, correct?

16 A Correct.

17 Q And C would be obtaining the citizenship  
18 data and status from administrative records for  
19 all of the census --

20 A Right.

21 Q -- population?

22 And then the Census experts in the memo

1 that you forwarded to Secretary Ross states,  
2 quote, we recommend either Alternative A or  
3 Alternative C, correct?

4 A Says right there in the memo.

5 Q So they were not recommending adding a  
6 question?

7 A They were recommending A or C.

8 Q Correct. Neither of which added the  
9 citizenship question, correct?

10 A Correct.

11 Q And they then go on to explain that in  
12 their view, quote, Alternative C best meets DOJ's  
13 stated uses, is comparatively far less costly than  
14 Alternative B, does not increase response burden,  
15 and does not harm the quality of the census count.

16 Do you see that?

17 A Yes, I do.

18 Q At no time have the experts in the Census  
19 recanted or changed their view on any of those  
20 four propositions with respect to Alternative C,  
21 correct?

22 MR. GARDNER: Objection. Lack of

1 foundation. Calls for speculation.

2 THE WITNESS: I can't speak to what all  
3 the people of the Census who participated in  
4 putting this memo together, I can't speak to that.  
5 I can agree with what you're saying on the page.

6 BY MR. GROSSI:

7 Q What I'm asking you is: You're not aware  
8 of anybody -- anybody at the Census Bureau coming  
9 to you or writing you and saying I disagree with  
10 any of those four facts, correct?

11 A Correct. And your four facts are --

12 Q We can take them one at a time. C best  
13 meets the DOJ's stated uses: That was their  
14 position then and it's their position now,  
15 correct?

16 MR. GARDNER: Objection. Calls for  
17 speculation. Lack of foundation.

18 BY MR. GROSSI:

19 Q I mean, in terms of lack of foundation,  
20 these people do work under your supervision,  
21 correct?

22 A That is what they wrote in the letter. I



1 don't know every single person at the Census -- I  
2 don't want to get caught up in that situation.

3 Q But they --

4 A But they have written that here in this  
5 memo, and I agree that that's what they wrote  
6 here.

7 Q And you also agree that from your own  
8 knowledge of dealing with these people on this  
9 issue and otherwise, you've never heard anybody  
10 from Census saying that it was wrong that  
11 Alternative C best meets DOJ's stated uses?

12 A Not to my knowledge.

13 Q And the same with no one ever said to you  
14 that it was wrong that Alternative C is  
15 comparatively far less costly than Alternative B?

16 A Not to my knowledge.

17 Q And Alternative C does increase the  
18 response burden: They never changed their mind  
19 about that as far as you know, correct?

20 A Not to my knowledge.

21 Q And Alternative C does not harm the  
22 quality of the census count: You have no reason

1 to think that's not their view today, correct?

2 MR. GARDNER: Objection. Calls for  
3 speculation. Lack of foundation.

4 THE WITNESS: Not to my -- not to my  
5 knowledge.

6 BY MR. GROSSI:

7 Q Now, let's talk about Alternative B,  
8 which is adding the question. And the Census  
9 experts said that, in their view, Alternative B is  
10 very costly.

11 Are you aware of anybody at the  
12 Census Bureau who has said that that is not true  
13 in their view?

14 A It is costly if they are -- their  
15 conclusions are correct.

16 Q Okay.

17 A It is more costly if their conclusions  
18 are correct.

19 Q And they've never suggested, as best they  
20 understand it and believe, that their conclusions  
21 in this memo are incorrect, they've never said  
22 that?

1 A Not to my knowledge.

2 Q They've also said that adding the  
3 question would harm the quality of the census  
4 count, correct --

5 A That is what they said.

6 Q -- they said that?

7 And you're not aware of any place where  
8 they've changed their minds since this memo was  
9 written?

10 A Not to my knowledge.

11 Q And then they finish off Alternative B by  
12 saying that it would use substantially less  
13 accurate citizenship status data that are  
14 available from the administrative sources.

15 Do you see that?

16 A I do.

17 Q And you understood that was their view.

18 And as far as you know, that's still  
19 their view today?

20 A Not to my knowledge. It did not change.

21 Q Now, I'm going to go into the specifics  
22 on the next page a little bit more, but let me

1 are off the record.

2 (Off the record.)

3 VIDEOGRAPHER: This begins Media Unit  
4 Number 5. The time on the video is 2:35 p.m. We  
5 are on the record.

6 (Plaintiffs' Exhibit 22, Email, was  
7 marked.)

8 BY MR. GROSSI:

9 Q Secretary Kelley, I'm going to give you a  
10 document -- and I'm going to tell you right now,  
11 I'm going to ask you about the front page and not  
12 the attachment. I'm going to show you a later  
13 version of the questions, and we'll get into it  
14 then. If you want to just look at the first page,  
15 I just want to get context of when you began to be  
16 aware, again, of these questions that were being  
17 floated. And I'll just read in for the record,  
18 and tell you why I'm interested, the top page,  
19 2292, on Exhibit 22 is an email to Mr. Comstock  
20 from Burt Reist, and it talks about the  
21 citizenship questions complete set as of that  
22 date, February 2nd, and then there is a set of the

1 questions and answers.

2 A We're not looking at those?

3 Q Right. And all I'm asking you is: Was  
4 it about the first week in February when you  
5 returned that you learned that these questions and  
6 answers were being circulated and being addressed  
7 by the Census experts?

8 A To back up, the day that we had the  
9 meeting, there were questions being thrown out by  
10 a lot of people. Again, I want you to understand.  
11 This process was iterative. It was collaborative.  
12 We were sitting around, people were asking  
13 questions. I was jotting down questions. Other  
14 people were jotting down questions. We were sort  
15 of compiling questions. Then people had the  
16 ability to come back later on and say, I just  
17 thought of this. There's another question. So we  
18 were sort of keeping a pile of the questions.

19 I was the keeper of the questions. They  
20 weren't all my questions, but they would refer to  
21 them as Karen's questions or Karen's list or  
22 Karen's whatever, just because I had them. When I

1 did leave, I handed that document, that list of  
2 questions to somebody else so that they would have  
3 it so the work could continue, they knew where it  
4 was. And so when I returned, I knew the questions  
5 were in process -- or some had been answered, some  
6 had been processing, and I just needed to get  
7 caught up on where they stood.

8 Q Good. Thank you.

9 Let me ask you a little bit more about  
10 this meeting. Whenever the date actually was, who  
11 was present, the best you can remember?

12 A There were -- certainly, Enrique Lamas,  
13 Dr. Abowd, Dr. Jarmin -- I should say Dr. Lamas.  
14 We had people from legal -- legal there. We had  
15 people from policy there. Earl was there.  
16 Comstock was there. I believe both James and  
17 Peter were there, but I -- I don't know exactly.

18 Q Peter Davidson?

19 A Yeah. But, again, I'm not exactly  
20 100 percent sure. But it was a compliment of the  
21 entire group of the three groups that I talked  
22 about being involved.

1 Q It was all Commerce and/or Census people,  
2 correct?

3 A Oh, yes. As opposed to who?

4 Q As opposed to the Department of Justice?

5 A Oh. No. No. No. It was just Commerce  
6 people, yes.

7 Q And Secretary Ross was not there?

8 A No. He was there.

9 Q Oh. He was there?

10 A He was there. Absolutely.

11 Q And he had, by this time, received and  
12 digested the memo --

13 A The memo, not the -- the question --

14 Q -- we talked about earlier, the January  
15 19th memo?

16 A Yes.

17 Q Did he express his view that he thought  
18 the citizenship question should be added?

19 A No. He asked questions. It was really a  
20 very open dialog with a lot of questions going  
21 back and forth and clarification and can we find  
22 this out, which led to many of the questions.

1 Q Did Secretary Ross know at that time that  
2 Justice had declined to meet about this --

3 MR. GARDNER: Objection. Calls for  
4 speculation.

5 BY MR. GROSSI:

6 Q -- something had happened a couple weeks  
7 earlier?

8 MR. GARDNER: Objection. Calls for  
9 speculation. Lack of foundation.

10 THE WITNESS: I don't know the answer to  
11 that.

12 BY MR. GROSSI:

13 Q Did Secretary Ross express to you that it  
14 would be important for the Justice people to meet  
15 with the Census people so that they could  
16 understand the technical aspects of why Census was  
17 saying that administrative records would be better  
18 than adding a citizenship question?

19 A I -- I don't recall the dialog around  
20 that.

21 Q You don't recall anybody expressing the  
22 view that they should meet with Justice to explain



1 to them why the Census solution was better than  
2 adding a question? You don't remember that coming  
3 up?

4 A No. In regard to my conversation with  
5 Ron and the notes that you told me that I knew the  
6 meeting wasn't happening, I mean, I knew all that.  
7 You were speaking specifically in reference to the  
8 Secretary, and I don't recall the conversations  
9 around that with the Secretary.

10 Q All right. Okay. I want to switch  
11 topics slightly, and we're going to come back to  
12 the questions in chronological order.

13 A And are these the questions we're using,  
14 or are you giving me --

15 Q I'll give you a later version.

16 A Because, like the letter, there were lots  
17 of versions of the questions.

18 Q Right. As you look at that, as best you  
19 can, do you think that it refreshes your  
20 recollection that by about February 2nd you were  
21 back focusing in on this issue?

22 A That would have been the Friday after

1 I -- if I were back that day -- and I believe I  
2 was -- I was just sort of cleaning up and prepping  
3 up.

4 Q That was the transitional time. Okay.  
5 Fair enough.

6 A And, in fact, I'm not even on this email  
7 that went to Earl.

8 Q Right. I noted that. I just wanted to  
9 see if, perhaps, they gave you a copy as soon as  
10 you got back.

11 Do you remember a meeting with the  
12 Secretary -- a further meeting with the Secretary  
13 around February 12th?

14 A Again, I don't remember the dates, but  
15 there was a second -- secondary meeting that --

16 Q Who was present at that meeting?

17 A So I want to be very clear that at the  
18 time that this was going on, this became an  
19 iterative process. It was evolutionary. People  
20 were working collaboratively together. It wasn't  
21 a work, stop, hand all the documents. It was  
22 answering questions. It was dialog. And so there

1 were other questions -- there were other meetings.  
2 If there was an oversight meeting or steering  
3 committee meeting, a group may have joined at the  
4 end of it to discuss this. So there were lots of  
5 dialog and conversation going on.

6 Q And Secretary Ross attended that meeting?

7 A Not all, but many of them.

8 Q He attended that meeting -- if it might  
9 be the first week or second week in February.

10 A I believe that sounds reasonable.

11 Q And it was, otherwise, all Commerce and  
12 Census people, correct?

13 A Yes.

14 Q No Justice people?

15 A No Justice people.

16 Q And is it essentially the same group you  
17 think you had before, Mr. Comstock?

18 A We had, clearly, representation from  
19 legal, policy, Census.

20 Q Okay.

21 A Because you wouldn't want to have the  
22 meeting unless you had representation from all

1 three of these groups we were using as guiding  
2 principle as we looked at this.

3 Q Now, Secretary Ross by this point had  
4 heard from the Census experts that they  
5 recommended against adding this -- the citizenship  
6 question, correct?

7 A Right. He asked many questions of them,  
8 and he said they are valid questions, and we will  
9 get back to you. So it was a dialog going on.

10 Q And they had, in fact, prepared a set of  
11 those questions to provide to him?

12 MR. GARDNER: Objection. Form.

13 BY MR. GROSSI:

14 Q That was -- part of the process on  
15 February 12th was to receive, either in written  
16 form or in oral form, the answers to his  
17 questions?

18 A I don't want to get hung up on the date  
19 of the meeting, but, yes, there was a later  
20 meeting for him to get the answers to the  
21 questions.

22 Q Actually, I think now that we know that

1 this may be a more important document, let's go  
2 through it. I just want to point out the answers  
3 to three questions, okay?

4 A In this document that we weren't going to  
5 use?

6 Q Right. The one we have the attachment  
7 on.

8 A Which we don't know if this was a draft  
9 or final copy, do we?

10 Q It is not the final copy, but it is the  
11 copy closest to the mid-February meeting. That's  
12 why I'm going to ask you about it.

13 A I said I don't know if there was meet- --  
14 when the date was of that mid-February meeting  
15 was.

16 Q Okay.

17 A So I don't want to --

18 Q Well, we have had testimony that there  
19 was a big meeting with Secretary Ross on  
20 February 12th.

21 Does that refresh your recollection?

22 A I know there was a meeting around that

1 time, so I'm not disputing that. If my colleagues  
2 said it was on February 12th, I wouldn't disagree  
3 with them. I'm just saying I don't specifically  
4 remember.

5 Q Okay. Just take a look --

6 MR. GARDNER: Exhibit 23.

7 BY MR. GROSSI:

8 Q So 22.

9 A I have one big packet of stuff here and  
10 it --

11 Q Right. And it should have the questions  
12 attached.

13 MR. GARDNER: No.

14 MS. KELLY: It's --

15 MR. GARDNER: You intended it to be a  
16 single exhibit?

17 BY MR. GROSSI:

18 Q Okay. So we're -- and to be very  
19 precise, in Exhibit 22 on Page 2294, it begins the  
20 questions and answers to the questions that were  
21 asked about the January 19th draft.

22 Do you see that?

1           A     Yes.

2           Q     Okay. I want to just ask you about  
3     three, all right.

4                 The first one is Question Number 10.  
5     Someone was interested and asked the question,  
6     "The NRFU numbers are comparatively small.  
7     Approximately one additional house for NRFU [sic]  
8     percent enumerator. Is this really a significant  
9     source of concern?"

10           Let me just ask: Do you recall who posed  
11     that question initially?

12           A     No, I don't.

13           Q     Okay. The answer of Census experts is,  
14     quote, yes, this is a significant concern. First,  
15     it gives rise to incremental NRFU costs of at  
16     least 27.5 million. This is a lower bound because  
17     it assumes the households do not self-respond  
18     because we added a question on citizenship, have  
19     the same follow-up costs as an average U.S.  
20     household. They won't, because they -- these  
21     households overwhelmingly contain at least one  
22     noncitizen, and that is one of our acknowledged

1 hard-to-count subpopulations.

2 Do you remember that the Census Bureau  
3 responded to the question by saying that it really  
4 was a significant concern in their minds that  
5 adding the citizenship question would increase the  
6 nonresponse rate?

7 A So my vernacular here will be NRFU,  
8 that's what they call it, N-R-F-U is called NRFU.  
9 And there was a discussion about this, and there  
10 was a discussion about the fact that one  
11 percentage point out there is -- there's  
12 \$15.6 billion lifecycle cost estimate to get this,  
13 and -- to do this census and, quite frankly, as  
14 we're going through this and there were many  
15 new -- new ways the census was being taken by  
16 Internet self-response and telephone and there  
17 were other things, there was -- at least the 27.5  
18 million, which is in this.

19 This -- because of the conversation  
20 around the fact that it would be a noncitizen who  
21 would not answer this, in their opinion, this is  
22 their conclusion of the data, they looked at it.



1 It would be those households, you know, at least  
2 one noncitizen are the hard-to-count population,  
3 and that is absolutely right. We consider that  
4 the hard-to-count population, and we spend a  
5 tremendous amount of time on how to count the  
6 hard-to-count population.

7 The Census Bureau, if you ever have been  
8 with the Census, you can do all the technology you  
9 want in the background and we can provide  
10 everything. It's the people -- feet on the  
11 ground, those people that are out there  
12 enumerating, doing the job, which the Secretary  
13 did when he was himself in college. So he is very  
14 familiar with that exercise -- they do this and  
15 they did -- they did state this concern.

16 We also talked about mitigation to this  
17 concern, and we talked about the fact that we  
18 were, in this census, increasing the number of  
19 partnership programs that we were having. We were  
20 rethinking the way things were being done, so we  
21 were already talking about if -- not on this  
22 date -- but what our mitigation strategies were if

1 this were to be the case.

2 Q But Census never changed its view and  
3 never changed their answer to this question,  
4 correct?

5 A No, they did not, as far as I know.

6 Q Let me ask you about another one  
7 that's --

8 (Conference call interrupted.)

9 BY MR. GROSSI:

10 Q Okay. Let me state it again.

11 Directing your attention to Page 2299,  
12 the Question 13 and answer -- excuse me -- the  
13 question is, quote, if Census is confident that  
14 administrative data will be available to be used  
15 to determine citizenship for all persons, e.g.,  
16 not all citizens have Social Security numbers,  
17 unquote.

18 I think you alluded to this a moment ago  
19 when you talked about having MOUs in place to have  
20 the right administrative data. Do you remember  
21 that?

22 A Yes, I did.

1 Q But the answer of the Census experts was,  
2 quote, we are confident that Alternative C is  
3 viable, and that we already have invested enough  
4 high quality citizen administrative data from SSA  
5 and IRS, unquote, and then it goes on to elaborate  
6 a little bit.

7 I'll represent to you that this answer  
8 was never changed in any subsequent draft of these  
9 Q&As. Is that also your recollection, that the  
10 Census experts believed they had the data in place  
11 to make administrative data use viable?

12 A They answered the Question Number 13, to  
13 say yes. But also in the original document, which  
14 has the three alternatives, they do say that they  
15 would want to put a memorandum of understanding in  
16 place so they would have higher quality data in  
17 order to do that. But it is not my understanding  
18 that they have changed that answer to that  
19 question.

20 Q So they thought it was viable six months  
21 ago and they think it's viable now, right,  
22 Alternative C?

1           A    They've not -- to my knowledge, they have  
2 not changed that.

3           Q    All right. Let's leave that, and I just  
4 want to ask about a couple more things.

5           A    Are we leaving this?

6           Q    Yes. We may be returning to it, but for  
7 right now, we're leaving it.

8                   I'm marking as Exhibit 23 an email that  
9 begins on Bates number 4853.

10                   (Plaintiffs' Exhibit 23, Email, was  
11 marked.)

12 BY MR. GROSSI:

13           Q    Now, this is an email chain on  
14 February 13th, which if Dr. Jarmin's recollection  
15 is correct, was the day after the meeting with  
16 Secretary Ross. And if you go to the first item,  
17 which is the last on the chain, we find Mr. Jarmin  
18 writing to a Michael Strain, and he says, "We are  
19 trying to set up some meetings for Secretary Ross  
20 to discuss the proposed citizenship question on  
21 the 2020 census with interested stakeholders.  
22 Most stakeholders will speak against the proposal.

1 We're looking to find someone thoughtful who can  
2 speak to the pros of adding such a question or  
3 perhaps addressing the fundamental need, some  
4 other" -- I'm sorry -- "the fundamental data need  
5 some other way (e.g., admin records.) Do you know  
6 of anyone at AIE or elsewhere that could do this  
7 sometime over the next couple weeks?"

8 And Michael responds by saying, "None of  
9 my colleagues at AIE would speak favorably about  
10 the proposal. It is -- is it important that the  
11 person actually be in favor of how -- the  
12 proposal?"

13 You were involved in efforts to discuss  
14 the possibility of adding a citizenship question  
15 with what has been referred to as stakeholders?

16 A Uh-huh.

17 Q Correct?

18 A Yes. I'm sorry.

19 THE WITNESS: Yes, Karen.

20 BY MR. GROSSI:

21 Q You attended some meetings with some of  
22 those people?

1           A    I attended some meetings. Did not attend  
2 all the meetings.

3           Q    Did you also, on one occasion, listen in  
4 by telephone, because maybe you were in a  
5 different location?

6           A    Yes. Yes.

7           Q    AIE is the American Enterprise Institute  
8 in this context, correct?

9                   MR. GARDNER: Objection. Lack of  
10 foundation. Calls for speculation.

11                   THE WITNESS: I honestly am not 100  
12 percent sure, but I believe so. I do not know  
13 Michael Strain, at all. So I have no basis --

14 BY MR. GROSSI:

15           Q    Dr. Jarmin was tasked with trying to find  
16 someone who would speak in favor of adding the  
17 citizenship question, correct?

18           A    I'm going to say that is incorrect. What  
19 we sat in the meeting and discussed with the  
20 people from the Census, the entire group that were  
21 there, we said that the Secretary wanted to get  
22 opinions of stakeholders. We then wrote those

1 stakeholders, and it was a group effort and group  
2 discussion to say we want pros, we want cons, we  
3 want him to hear from federal, local businesses,  
4 businesses, special interest groups, so on and so  
5 forth, former directors, so that he could get an  
6 academic, intellectual -- he could get a full look  
7 at the -- at people who wanted to comment on it.  
8 And we wanted to get -- a combination of views,  
9 because we wanted it to be very objective.

10 Q And what Mr. Jarmin -- Dr. Jarmin  
11 responded to Mr. Strain, as indicated on the first  
12 page, 4853, is, "We are trying to find someone who  
13 can give us a professional expression of support  
14 for the proposal in contrast to the many folks we  
15 can find to give professional statements against  
16 the proposal," unquote.)

17 So bottom line was you had plenty of  
18 people who were against adding the question, so  
19 Dr. Jarmin was trying to balance that out with  
20 someone who would speak in favor of the proposal;  
21 isn't that right?

22 MR. GARDNER: Objection. Lack of

1 foundation. Calls for speculation.

2 THE WITNESS: Yeah. I wouldn't say that  
3 as much as I would say that what we did is we  
4 had -- we were trying to make the list, we were  
5 trying to make it very fair, very balanced, and we  
6 were looking at it. And I don't know where it was  
7 in the process of discussing this. But, for  
8 example, I don't know a lot of people in this  
9 town. I wouldn't -- I wasn't involved in making  
10 many calls, but one person I did know, a gentleman  
11 named Arturo Vargas, who I had met with before,  
12 who I knew was against this. I said, let's make  
13 sure he's on the question -- on the list, because  
14 he had been vocal, and he came to meet with me on  
15 other topics well before the question. I said,  
16 let's make sure we get his opinions on this. So  
17 we were getting opinions. We were filling out the  
18 list. So I can't tell you at this point how they  
19 were filling out the list.

20 BY MR. GROSSI:

21 Q Okay. In any event, he told you at the  
22 top in an email to you that, "It appears that no



1 one at AIE willing to speak in favor of putting  
2 question on the 2020," unquote, correct?

3 A Yeah. That's exactly what it says. He  
4 wrote to me.

5 Q And did Dr. Jarmin keep looking for  
6 people who would speak in favor of putting the  
7 question on the proposal?

8 A I believe as we sat in that meeting, we  
9 had a list of groups and/or people that would make  
10 sense to talk to. And so -- I don't know where he  
11 was on the list. If he was at the beginning, the  
12 end, where he was exhausted on the list, but there  
13 would be other people on the list that he could  
14 call and not call. And we actually felt very  
15 important, that we had the Census input on who  
16 they wanted us to speak to.

17 Q You figured the Census people would be  
18 the best judges of who would be an effective  
19 person, one way or the other?

20 A Well, they would certainly know experts  
21 in the field.

22 Q Right.

1           A    They would certainly know -- and we had  
2   the business liaison talk to us about which  
3   business people we should put on, and, you know,  
4   that kind of thing.

5           Q    Sure.

6           A    But very much with a view we wanted the  
7   Secretary to have not only geographic,  
8   demographically, but across multiple -- multiple  
9   groups.

10          Q    One group that you were particularly  
11   interested in were the prior Census directors,  
12   correct?

13          A    Yes, we did.   We put that as one of our  
14   categories.

15          Q    And did Mr. Jarmin  
16   provide -- Dr. Jarmin -- I'm sorry -- provide you  
17   with the input of Census directors?

18          A    No.   The Secretary had calls with them.

19          Q    The Secretary directly called up prior  
20   Census directors?

21          A    So let me be very clear on this.   We put  
22   together -- from the lists that we produced from

1 these meetings and the work people did, we  
2 produced a list and then worked with his  
3 scheduling to have meetings so he could hear what  
4 these people said. I would say to you that the  
5 Secretary has schedulers and other people that  
6 probably made the phone calls for him. Very  
7 specific to your question, did he make phone  
8 calls, but he did have -- he participated in phone  
9 calls.

10 Q And did you participate in any of those  
11 calls by listening in?

12 A I participated in some, not all.

13 Q Let me mark two related documents as  
14 Exhibit 24, 8554, an email from John Thompson to  
15 Ron Jarmin dated January 29, 2018, and  
16 sequentially, 8555, which is Exhibit 25, which is  
17 a letter to Secretary Ross.

18 MR. DEWHIRST: Is this two exhibits or  
19 one?

20 MR. GARDNER: Two exhibits.

21 MR. GROSSI: Two.

22 (Plaintiffs' Exhibit 24, Email, was

1 marked. Plaintiffs' Exhibit 25, Email, was  
2 marked.)

3 BY MR. GROSSI:

4 Q Okay. Have you seen copies of this  
5 document before?

6 A Yes.

7 Q Did you see it at about the time that, I  
8 guess, Dr. Thompson sent it to Dr. Jarmin in  
9 either late January or more likely, in your case,  
10 early February 2018?

11 A I would -- I would have probably seen it,  
12 yes. I would probably have seen it in February.

13 Q And, for the record, what Exhibit 25 is,  
14 is a letter that was addressed to Secretary Ross  
15 on January 26th by six different former  
16 Census directors, correct?

17 A Yes.

18 Q And it's fair to sum this up by saying  
19 that they were against adding the citizenship  
20 question, correct?

21 A They suggest to not put the question on  
22 the census because of the testing.

1 Q Uh-huh.

2 A They don't bring up, to my knowledge, or  
3 to my quick review here, they don't bring up other  
4 reasons for not putting it on, but that it has not  
5 been well tested.

6 The question had been on the ACS  
7 since -- for many years and had been many -- had  
8 been tested over and over with that wording. So  
9 there was a discussion about whether or not the  
10 testing was tested.

11 Q You think maybe those former Census  
12 directors didn't know about the question on the  
13 ACS?

14 MR. GARDNER: Objection. Calls for  
15 speculation.

16 THE WITNESS: I --  
17 BY MR. GROSSI:

18 Q Because that is what was suggested?

19 MR. GARDNER: Objection. Argumentative.

20 THE WITNESS: I'm not commenting on that.  
21 I'm just saying this was a letter that talked  
22 about the testing. We then had a full discussion

1 with the Census Bureau on the testing of the  
2 question on the ACS, and if they thought that that  
3 was acceptable amount of testing and that the  
4 testing was sufficient, and that that is what I am  
5 suggesting. I am not suggesting and would not  
6 suggest making any comments about what these  
7 individuals were thinking.

8 BY MR. GROSSI:

9 Q So when they state on the first page,  
10 quote, we strongly believe adding an untested  
11 question on the citizenship status at this late  
12 date in the decennial planning progress would put  
13 the accuracy of the enumeration and success of the  
14 census in all communities at grave risk. That is  
15 what they told Secretary Ross, correct?

16 A That is what is written here.

17 Q And was there anyone among your Census  
18 experts who said, you know, these guys are wrong  
19 about that, I disagree with them?

20 A Our Census experts talked to us about the  
21 testing that had taken place under the ACS and the  
22 fact that that was adequate testing.

1 Q Did they say they disagreed with the  
2 conclusions of the former Census directors?

3 A I do not believe we ever asked the  
4 question in relation to. But when we read this  
5 letter, said we need to discuss with Census  
6 whether they think the testing is correct. But we  
7 did not -- you're making it did we put this letter  
8 down, and, therefore, they answered these  
9 questions. Once this letter was read, we said  
10 we've got to discuss testing with the  
11 Census Bureau, who said that they believed  
12 adequate testing had been done --

13 Q Okay.

14 A -- over the years of the ACS.

15 Q Now I'd like you to go back to those  
16 questions and answers from the prior draft, and I  
17 want you to turn in Exhibit 22 to Page 2303 and,  
18 specifically, Question 31 in the answer.

19 A I'm on the wrong page. Excuse me.

20 Q You see that? And it has to do with this  
21 issue of process. And it says, what was the  
22 process that was used in the past to get questions

1 added to decennial census, or do we have something  
2 similar where a precedent was established?

3 And then in a very long answer, it says  
4 that the Census Bureau follows a well-established  
5 process that involves extensive testing, review  
6 and evaluation. And then specifically on the next  
7 page, outlines six steps that are taken.

8 Do you remember that?

9 A I see this, yes.

10 Q Okay. In this case, had the federal  
11 agencies evaluated their needs and proposed  
12 additions through the OMB?

13 A So let me be really clear on this. When  
14 we started down the process of putting this  
15 question on, we said to Census, how do we go  
16 about -- what is it that we need to come up  
17 with -- what do we need to do in order to put this  
18 question on? And the answer was, at the top of  
19 the house, the guiding principles were we needed  
20 to have a legal review, an operational/technical  
21 review, and we needed to have a policy decision  
22 made.



1           We then said, have you had any other  
2   likewise times where this has happened? And they  
3   said, well, it's kind of complicated, because  
4   before, for 2000 -- in 2000, we had the long form,  
5   we had the short form, so we really didn't -- we  
6   really didn't change much there. And then we went  
7   to the ACS, and we think about how we put the  
8   question on the ACS, and sort of talked about all  
9   of these things down -- down the path, and I have  
10   seen this written -- this same language -- this  
11   same dialog written in about four, five, six  
12   different ways. And so what I would always go  
13   back to with Ron, Enrique and others was, what is  
14   it that we need? We need a legal review. We need  
15   a technical policy review -- excuse  
16   me -- technical/operational view, scientific  
17   review, and we need a -- a policy decision made.

18           So I will tell you the way this question  
19   Number 31 is written here, there had been other  
20   iterations of this same thing written by different  
21   people, but there was no hard fast guideline in  
22   terms of this is a statutory requirement or this

1 is a requirement that has been passed down.

2 Q This question was assigned to  
3 Victoria Velkoff to answer initially?

4 A I don't know the answer --

5 MR. GARDNER: Objection. Foundation.

6 THE WITNESS: I don't know the answer to  
7 that.

8 BY MR. GROSSI:

9 Q The answer that appears on 2302, 3 and 4  
10 that we just referred to, that's the answer of the  
11 Census Bureau; isn't it?

12 A Yes. I believe so.

13 Q Okay.

14 A But the Census Bureau has answered that  
15 same question several different ways in other  
16 discussions.

17 Q Okay. That's what I want to try to  
18 understand. I'm going to mark as Exhibit 26 a  
19 later version.

20 (Plaintiffs' Exhibit 26, Questions, was  
21 marked.)

22 BY MR. GROSSI:

1 Q Now, on Page 1296 of Exhibit 26, there's  
2 the same question about what process has been  
3 used, but a very different answer, a much shorter  
4 answer that doesn't mention all the steps that  
5 have typically been taken. All I want to know is:  
6 Who wrote that?

7 MR. GARDNER: Objection. Lack of  
8 foundation. Calls for speculation.

9 THE WITNESS: I don't know who wrote  
10 that.

11 BY MR. GROSSI:

12 Q Do you think it was anybody in the Census  
13 or do you think it was someone else not in the  
14 Census Bureau?

15 MR. GARDNER: Objection. Form.  
16 Objection. Lack of foundation. Calls for  
17 speculation.

18 THE WITNESS: Oh, no. I will tell you I  
19 truly believe that any answers that were written  
20 were viewed and looked at across the groups.

21 BY MR. GROSSI:

22 Q That wasn't my question, ma'am. My

1 question was: Do you know who wrote the  
2 answer --

3 A And I told you I don't know. I don't  
4 know. And then you ask me a subsequent  
5 question --

6 Q And you're not prepared to say that you  
7 swear that it was written by somebody in the  
8 Census Bureau, correct? You don't know?

9 A I don't. I -- I would assume so, but I  
10 can't assume --

11 Q I would not want you to assume here.

12 A But everybody proofed the questions.  
13 Everybody had a look at the questions. So  
14 everybody looked at these questions.

15 Q All right. I have just a couple more  
16 exhibits. Okay. I'm marking as Exhibit 27 a  
17 document that begins with Bates number 9812. It's  
18 dated March 1, 2008 [sic]. It does have a list of  
19 those questions, but I'm not going to ask you  
20 anything about them. My questions are going to be  
21 entirely about the first three pages of the  
22 document.

1 (Plaintiffs' Exhibit 27, March 1, 2018)

2 memorandum, was marked.)

3 BY MR. GROSSI:

4 Q I'm sorry. Five pages before the  
5 questions begin, up through 9816.

6 Okay. Okay. On this exhibit, is it the  
7 same type of format at the beginning that shows  
8 that the views of Dr. Abowd and then Director  
9 Jarmin, Assistant Director Lamas, and then you,  
10 you were sending this up to Secretary Ross,  
11 correct?

12 MR. GARDNER: Objection.

13 Mischaracterizes the document.

14 BY MR. GROSSI:

15 Q Let me ask, you sent this document to  
16 Secretary Ross, correct?

17 A It went from -- through Dr. Abowd,  
18 Dr. Lamas, Dr. Jarmin to the Secretary.

19 Q And according to Dr. Jarmin, you had  
20 reviewed this memorandum before it was sent to  
21 Secretary Ross. Is that your recollection, also?

22 A Yes.

1 Q And what's going on here on March 1, 2018  
2 is that by now, someone has come up with the idea  
3 of an Alternative D, which would, in a sense,  
4 combine the old Alternatives B and C, in that a  
5 census -- the census would contain a citizenship  
6 question, but in addition, they would use the  
7 administrative data to link up to answer needs of  
8 Department of Justice and other people, correct?

9 A Correct.

10 Q Who came up with that Alternative D  
11 first?

12 A I honestly do not remember. I'll tell  
13 you we were in a meeting. We were talking about  
14 all the different facts. And, again, it was an  
15 iterative, evolving process, as I said. The  
16 questions were being reviewed. We were  
17 talk- -- and -- and somebody said, why don't we  
18 look at the combination of B and C and see what  
19 that would do.

20 Because one of the things that we  
21 determined as we looked at it, that there was no  
22 baseline. So you really didn't have a baseline.

1 So if you did this, you would create that baseline  
2 and then the administrative records,  
3 which -- which we are going to be using much more  
4 in the census than in other censuses prior, we  
5 could then have a baseline in to which use -- use  
6 that going forward.

7 Q D wasn't proposed by anybody at the  
8 Census Bureau, correct? It was someone else,  
9 right?

10 MR. GARDNER: Objection to form.

11 THE WITNESS: I -- yeah. You're asking  
12 me who proposed the question. I don't remember  
13 who was sitting around -- we were sitting around a  
14 table, in a group. I remember discussing the  
15 baseline, and the Census Bureau clearly agreed  
16 that there was a lack of issue -- there was a lack  
17 of a baseline, and that this would -- that that  
18 was, as well as others, a -- a flaw, if you will,  
19 in Option C. And I don't know who said it.

20 It was one of those things where -- and,  
21 again, I don't want to sound simpleton, but, you  
22 know, when a whole group of people are sitting in

1 a room and trying to work through a problem the  
2 best they can, and these people are throwing out  
3 suggestions, what about this, what about this,  
4 what about this question and then it came up.

5 BY MR. GROSSI:

6 Q Then it was decided that the experts in  
7 the Census Bureau would analyze that in detail,  
8 correct?

9 A Absolutely. Yes.

10 Q And that's the product --

11 A The product that --

12 Q -- that's here?

13 A That product --

14 Q And what they concluded on Page 9816 --  
15 and I'm not going to go through all the reasons  
16 they set forth -- is they say in their last  
17 paragraph, "In sum, Alternative D would result in  
18 poor quality citizenship data than does  
19 Alternative C" -- the old Alternative C. They  
20 concluded that, correct?

21 A Yes. It says that right on Page 9816.

22 Q And they've never taken that back,



1 correct?

2 MR. GARDNER: Objection. No foundation.  
3 Calls for speculation.

4 THE WITNESS: I -- not that I -- not that  
5 I know of.

6 BY MR. GROSSI:

7 Q They further say that, "Alternative D  
8 would have all the negative cost and quality  
9 implications of Alternative B outlined in the  
10 draft January 19th memo to the Department of  
11 Commerce."

12 Correct?

13 A Correct.

14 Q So Alternative D was not going to solve  
15 any of those problems in adding the census --  
16 citizenship question, correct, according to the  
17 experts at the Census?

18 A Certainly from Dr. Abowd's comments here.  
19 But it -- it did not still -- and we discussed it  
20 at length, addressed the baseline situation.

21 Q There were no subsequent memoranda like  
22 this from the Census Bureau up the chain to

1 Secretary Ross concerning this issue of whether or  
2 not to add a citizenship question, correct?

3 MR. GARDNER: Objection. Form.

4 THE WITNESS: Okay. And I want to be  
5 very clear on this, and I want people to  
6 understand what I'm saying.

7 When we discussed this memo -- and I  
8 think many people, not all, would say this is  
9 reasonably complicated -- we tried to look at what  
10 was a schematic that we could make this easier to  
11 understand, and, therefore, later, a schematic was  
12 produced that was -- I don't want to say added to  
13 this -- but complimented this. So I don't want to  
14 say nothing -- you're saying to me, was anything  
15 created from this document? I don't want to  
16 play -- I don't want to get in a nomenclature  
17 issue with you. I want to be very honest with  
18 this group that, yes, there was a schematic that  
19 was produced to help understand what this looked  
20 like.

21 BY MR. GROSSI:

22 Q And I appreciate the answer.

1           The schematic addition or iteration did  
2           not change the conclusion that we just talked  
3           about of the Census Bureau, that Alternative D was  
4           not preferable to C, and, in fact, had all of the  
5           problems of B adding to the question, correct?

6           A     In Dr. Abowd's memo, yes.   That is  
7           correct.

8           Q     And there is no subsequent  
9           Census-authored memorandum?

10          A     Not that I am aware of.

11          Q     On this issue?

12          A     Not that I'm aware of.

13          Q     And I'm going to ask in a moment, but I  
14          want to clarify one thing.

15                 (Plaintiffs' Exhibit 28, Final decision,  
16          was marked.)

17          BY MR. GROSSI:

18          Q     Exhibit 28 is what I believe you've  
19          referred to as the final decision of  
20          Secretary Ross. Can you confirm that that's what  
21          you had in mind when we talked about it?

22          A     Yes. Yes.

1           Now, I know that you testified earlier  
2           that funding was one of your big priorities when  
3           you first became Under Secretary; is that fair?

4           A     Yes.

5           Q     So is the census still in danger of being  
6           underfunded?

7           A     No.

8           Q     Can you explain?

9           A     Yes. I'd be happy to. And I don't have  
10          all the numbers in front of me, so we will -- if  
11          we will directionally correct.

12          When the GAO put out their report in May  
13          and the Secretary articulated about that report,  
14          he said he would look at the lifecycle cost  
15          estimate and the budget for the census. And so  
16          for those who would obviously assume -- that,  
17          again, remember the Census has the economic,  
18          demographic, so they have a baseline budget that  
19          keeps going. But once the decennial gets into  
20          play, the decennial budget goes up expeditiously,  
21          expeditiously and then it comes back down, and so  
22          you get the big hump.

1           So what our job was to do was really look  
2   at what should the lifecycle cost be in terms of  
3   the -- in terms of this -- there were already  
4   projects and programs -- and, again, I was not  
5   there at the time -- that were going over budget.  
6   So you really needed to look at this and say, what  
7   is the reality of doing the budget?   So what we  
8   did is we went through the entire budget.   We got  
9   certified independent cost estimators to come in  
10   and work with us.   So there was a co-project  
11   between the Department of Commerce and  
12   Census Bureau that would look at these two  
13   budgets.   And then when I got -- by the time I got  
14   there, again, August -- not July -- August 21st,  
15   the first meeting, big meeting with all the groups  
16   to review this budget was taking place within two  
17   days.   So that is one of the first things we did.  
18           Once we identified that budget and made  
19   adjustments to that budget and everybody agreed to  
20   the budget -- because we didn't want -- very  
21   important part of -- if you will, not to deviate,  
22   part of the governance I talked about before, that

1 steering committee, we didn't want the Census  
2 running a budget and the Department of Commerce  
3 running a budget, and then all of a sudden, a year  
4 later, oh, my goodness gracious. We wanted them  
5 on a periodic basis to get together, meet, make  
6 sure we were all agreeing on the numbers. So that  
7 was part of that steering committee's reason for  
8 kind of putting those kind of governance  
9 structures in place.

10 So what we did is we worked on  
11 those -- we also invited -- and when I say "we," I  
12 want it to be colloquial we. I was not there when  
13 all this work was done. They also invited people  
14 from OMB to participate in the project with the  
15 independent cost estimators, because OMB has been  
16 looking at the census for so long.

17 So at the end of this analysis, we  
18 determined -- we being -- the large we being  
19 inclusive of Census and the Department of  
20 Commerce -- that there needed to be a new  
21 lifecycle cost estimate. That we needed to go  
22 back to Congress, which the Secretary had said he

1 would do. We were then prepped up, prepared, went  
2 to some briefing meetings, so on and so forth, and  
3 went to Congress at the end of October, beginning  
4 of November, if my time frame is correct, and we  
5 talked about the funding, the change of the  
6 funding, the estimate, so on and so forth.

7 And, actually, the Congress has been  
8 extremely, extremely responsive to our needs, and  
9 we have the funding we want. And they actually --  
10 if I may compliment them -- did something that we  
11 very rarely see before, and they said that we  
12 could actually -- because at the time, if you  
13 remember, one of the other things in the GAO  
14 report was how are the systems going, scalability,  
15 all these kinds of issues. And they actually said  
16 that even though this was earmarked -- this is an  
17 example, '19 money, if you are ready to use it in  
18 '18 and you document why and you bring it to OMB  
19 and it is approved, we will let you use '19 money  
20 in '18. So, actually, that has been a very, very,  
21 very successful collaborative process.

22 I've answered enough of your questions.

1 Q You have. Let me just make sure I  
2 understand a couple smaller pieces of it.

3 Around October or November, you folks at  
4 Commerce finalized a lifecycle estimate; is that  
5 right?

6 A Yes.

7 Q And you brought that to Congress?

8 A Yes.

9 Q And Congress approved the budget that you  
10 were requesting?

11 A For '18 -- '19, now we're working on the  
12 '20 budget right now. But we have no reason to  
13 believe that they would not.

14 Q Has the funding request that you've made  
15 changed since the citizenship question  
16 determination in March of 2018?

17 A No. It has not.

18 Q Now, let's turn back to Exhibit 28, which  
19 is that decision memo.

20 Do you know who primarily wrote this  
21 document?

22 A No, I don't know who primarily wrote the



1 make sure the process was working. We wanted to  
2 see what was the U.N. recommendations, what did  
3 other developed countries do, those kind of  
4 things. But I was not -- those assignments were  
5 given to the most appropriate people to do.

6 Q Okay. So let's start from the second  
7 paragraph and Secretary Ross writes -- or let's  
8 say that he writes, because this is his memo, he  
9 signed it. "I had set out to take a hard look at  
10 the request and ensure that I considered all the  
11 facts and data relevant to the question so I could  
12 make an informed decision on how to respond."

13 Now, it's my understanding that you  
14 testified that Secretary Ross saw those memos that  
15 Census prepared, correct?

16 A Correct.

17 Q And you testified that he spoke to a  
18 number of stakeholders about this?

19 A Correct.

20 Q Are you aware of any other information or  
21 facts or data relevant to this question that  
22 Secretary Ross reviewed, other than those sources?

1           A    Well, as I said, there were legal  
2   documentation produced, right.

3           Q    Okay.

4           A    There was information about what do other  
5   developed countries do.   There was information on  
6   what the UN sources do.

7           Q    Uh-huh.   Anything else that you can think  
8   of?

9           A    Not off the top of my head.

10          Q    Anything you can think of that would  
11   refresh your recollection?

12          A    No.

13          Q    Now, you reported directly to  
14   Secretary Ross, correct?

15          A    Yes, ma'am.

16          Q    And Census was within your purview?

17          A    Yes.

18          Q    So did you have access to all of the  
19   information that Secretary Ross looked at in  
20   considering whether or not to add the question?

21               MR. GARDNER:   Objection.   Form.

22               THE WITNESS:   I do not have access to all

1 of the Secretary's files, information, and over a  
2 time span, I just would not have it. So I would  
3 have to answer that question as I do not believe I  
4 do -- I do not.

5 BY MS. GOLDSTEIN:

6 Q So Secretary Ross had some meetings with  
7 stakeholders that you did not attend, correct?

8 A Correct.

9 Q And he may have reviewed documents  
10 germane to this question that you are unaware of,  
11 correct?

12 A Over the course of time or in reading  
13 public documents or in whatever, I can't speak to  
14 what the Secretary did in full.

15 Q Okay. So let's go down this document.  
16 If you go to the last paragraph on this page,  
17 three lines down, it says that, "I also met with  
18 Census Bureau leadership on multiple occasions."

19 Now, you've testified already about a  
20 couple of those meetings that Secretary Ross had  
21 with Census Bureau leadership. Are there any  
22 other meetings that Secretary Ross held with

1 testified to earlier and the meeting on the  
2 timeline and the meeting on the forms, do you  
3 recall any other meetings that you attended with  
4 Secretary Ross and Census Bureau leadership?

5 A I cannot recall, but he had access to  
6 anybody he wanted to along this process.

7 Q Do you know if he spoke to the Census  
8 Bureau leadership without you present?

9 A I don't know the answer to that.

10 Q So let's turn the page. And if you go to  
11 the second full paragraph, the last --

12 A Can I -- he says here that he has been  
13 monitoring press coverage. So when you talk about  
14 things he was looking at, I'm sure that -- he says  
15 right there that was also there. I failed to  
16 remember to say that.

17 Q Terrific. And if you remember other  
18 things as we go on, just go ahead and tell me.

19 A I read that.

20 Q So the last sentence of that second full  
21 paragraph, it says that "Following the 2020" --  
22 "the 2000 census, decennial census -- "the long

1 form sample was replaced by the American Community  
2 Survey, ACS, which has included a citizenship  
3 question since 2005. Therefore, the citizenship  
4 question has been well tested."

5 Now, are you aware of whether the  
6 Census Bureau performed any research on how the  
7 citizenship question will perform specifically in  
8 the decennial census environment?

9 A The Census Bureau told us that they felt  
10 that it was well tested to be on the form.

11 Q Are you aware of any research that has  
12 been done with respect to how the citizenship  
13 question will perform on the decennial census  
14 environment?

15 A Not that I'm aware of. I am not aware.

16 Q And did you or anyone at Commerce ask the  
17 Census Bureau to research that question?

18 A We asked them if they felt that the  
19 question had been tested sufficiently enough to be  
20 on the -- on the form. We did not dictate  
21 research or tell them not to do research. We  
22 asked them for their opinion and gave them free

1 reign to do what they wanted to give us that  
2 opinion.

3 Q Within the time constraints that you were  
4 working, correct?

5 A Correct.

6 Q Do you know when the citizenship question  
7 was last tested in the context of the ACS or long  
8 form?

9 A No, I'm not -- I do not.

10 Q Was Census asked that question?

11 MR. GARDNER: Objection. Lack of  
12 foundation. Calls for speculation.

13 BY MS. GOLDSTEIN:

14 Q To your knowledge.

15 A To my knowledge, I'm not sure.

16 Q Did you or, to your knowledge, anyone  
17 else at Commerce see the results of the testing  
18 that had been performed on the citizenship  
19 question in the context of the ACS?

20 A No, not to my knowledge.

21 Q So let's go down to the next paragraph,  
22 and I'm just going to start in the middle of the

1 sentence, because it's a long one. "DOJ states  
2 that the current data collected under the ACS are  
3 insufficient in scope, detail and certainty to  
4 meet its purpose under the VRA."

5 Do you see that?

6 A And DOJ states current data collected  
7 under -- yes.

8 Q What, if anything, did Commerce do to  
9 validate that rationale, to your knowledge?

10 A I'm not aware. I'm not aware of  
11 anything.

12 Q And, to your knowledge, what, if  
13 anything, did the Census Bureau do to validate  
14 that rationale?

15 A You have to ask Census that question.

16 Q You're not aware of anything, correct?

17 A Correct.

18 Q To your knowledge, did the --

19 A I know that they have fully researched  
20 and they fully understand -- they've been doing  
21 this for a long time, but you need to get into  
22 details with them on that.

1 Q And who is they?

2 A The Census Bureau.

3 Q And the Census Bureau, to be clear, asked  
4 to meet the Department of Justice's technical  
5 experts, correct?

6 A I believe the note said that they sent it  
7 to Art Gary, and they said they were bringing  
8 their technical so they knew who to bring.

9 Q You understand that the Census Bureau  
10 asked to meet with the technical experts at DOJ,  
11 correct?

12 I don't want you to look at the  
13 documents, Secretary Kelley.

14 You understand that, right?

15 A There's a nomenclature issue here. They  
16 sent the letter to Art Gary, they said we're going  
17 to bring our technical people. Right. So the  
18 answer is, they did not -- I don't know if they  
19 reached out to the technical guys. I know they  
20 reached out to Art Gary from this, but I know they  
21 wanted to meet with him.

22 Q So Census asked Art Gary to set up a



1 meeting, yes?

2 A Yes. Absolutely. Yes.

3 Q And ultimately -- and that meeting was  
4 going to involve experts, correct?

5 A Yes.

6 Q And that meeting didn't happen, correct?

7 A Correct. Yes.

8 Q Okay.

9 A Well, what I don't know is who the DOJ  
10 was going to bring to the meeting. I do know who  
11 Census was going to bring to the meeting.

12 Q Who was Census going to bring to the  
13 meeting?

14 A Well, they said they were going to bring  
15 some technical people --

16 Q Oh, the categories?

17 A Yes.

18 Q To your knowledge, did the Department of  
19 Justice ever identify a number of cases that they  
20 would have brought, but for the absence of  
21 block-level citizenship data?

22 A And I'm not aware of that.

1 THE WITNESS: It is their conclusion.

2 It's not a fact. We won't know until after.

3 BY MS. GOLDSTEIN:

4 Q So let's talk about it in conclusion.

5 The Census Bureau concluded that the  
6 response rate would decline materially, correct?

7 MR. GARDNER: Objection.

8 Mischaracterizes the document.

9 BY MS. GOLDSTEIN:

10 Q Correct?

11 Let's go over to Exhibit --

12 A You got to help me out here.

13 Q Sure. And I'd like you to turn  
14 to -- this is the January 19th memo.

15 A Uh-huh.

16 Q And let's go to Page 1281.

17 And -- actually, let's go to the page right before  
18 that, 1280. Now, B2 of this is entitled  
19 self-response rate analysis, correct?

20 A Yes.

21 Q In the last sentence on this page states  
22 that, "Once again, the self-response rates were

1           You can look at me.

2           A     Describe what you mean by that.

3           Q     What do you think I mean?   What does  
4     empirical data mean to you?

5           A     Is this data that Census Bureau produced?  
6     Absolutely.   They produced this on a factual  
7     basis.   Is that where you're going?

8           Q     I just want to make sure -- so if you  
9     look at the last line of that paragraph that we  
10    were just looking at in the decision memo?

11          A     Okay.

12          Q     "No empirical data existed on the impact  
13    of a citizenship question on responses."

14                You see that?

15          A     So --

16          Q     Did I read it right?

17          A     No.   You read it -- that's Nielsen,  
18    senior vice-president, from the Nielsen Group who  
19    said that.

20          Q     Okay.   So -- I see your point.

21          A     That's the opinion of the --

22          Q     Okay.   So let's go back to the sentence

1 we were reading a moment ago, that neither the  
2 Census Bureau or the concerned stakeholders could  
3 document that the response rate would, in fact,  
4 decline materially.

5 Is that whether testing a question is  
6 for -- or one thing that testing can be for, to  
7 determine if response rates will decline  
8 materially?

9 A Yes.

10 Q And, for example, an end-to-end test  
11 that -- could test whether or not a question  
12 causes response rates to decline, correct?

13 A Yes. But an end-to-end test does a whole  
14 lot more than that.

15 Q Of course. But that's one thing it could  
16 do, right?

17 A It's one thing it could do.

18 Q And another thing that an end-to-end test  
19 can do is test whether or not NRFU -- or how  
20 effective NRFU is in the context of a citizenship  
21 question, correct?

22 A Correct.

1 Q And that was not done with the  
2 citizenship question, correct?

3 A Correct. It was done with the ACS over  
4 the year's time frame that was shown at the  
5 percent numbers and the amount of people.

6 Q And it's my understanding that you have  
7 not seen that data with respect to the ACS  
8 testing, correct?

9 A You said the testing. I've seen the  
10 results on the ACS, how many -- how many ACSs are  
11 out there, how many times the question's been  
12 asked, which is what this paragraph refers to.

13 Q So then the paragraph goes on to talk  
14 about Secretary Ross's discussion with Nielsen.  
15 Were you part of that conversation?

16 A I don't remember, but I -- I don't  
17 remember if I was on that call or not.

18 Q Is there anything that would help you  
19 remember if you were on that call?

20 A I could reconstruct the day, I guess. I  
21 mean --

22 Q Okay. Have you -- so you see that

1 Nielsen is referencing that it had added questions  
2 on the ACS on sensitive topics to certain short  
3 survey forms without any appreciable decrease in  
4 response rates.

5 Did you ever see those surveys from  
6 Nielsen -- that are referenced from Nielsen in  
7 that sentence?

8 A No.

9 Q Do you know if anyone at Commerce did?

10 A I don't know.

11 Q I would have to ask other people at  
12 Commerce to find out, correct?

13 A Correct.

14 Q Including Secretary Ross, to find out if  
15 Secretary Ross saw those, correct?

16 A Correct.

17 Q So let's go -- let's go to the last  
18 paragraph here, and this states that, "The  
19 Census Bureau determined that for 2013 to 2016,  
20 ACS surveys nonresponses to the citizenship  
21 question for non-Hispanic whites ranged from 6.0  
22 to 6.3, for non-Hispanic blacks ranged from 12.0

1 to 12.6 percent, and for Hispanics ranged from  
2 11.6 to 12.3 percent. However, these rates were  
3 comparable to nonresponse rates for other  
4 questions on the 2013 and 2016 census."

5 And one of the examples that is  
6 giving --

7 MR. GARDNER: You misread. It's 2016  
8 ACS.

9 MS. GOLDSTEIN: 2016, I apologize.

10 BY MS. GOLDSTEIN:

11 Q And one of the examples that they give,  
12 "The Census Bureau estimates" -- "Census Bureau  
13 estimates showed similar nonresponse rate ranges  
14 occurred for questions on the ACS asking the  
15 number of times the respondent was married, 4.7 to  
16 6.9 percent."

17 Now, do you agree that the 4.7 to 6.9  
18 percent nonresponse rate for the question, the  
19 number of times the respondent was married, is  
20 similar to the nonresponse rates to the  
21 citizenship question for non-Hispanic blacks and  
22 Hispanics that ranged from 11.6 to 12.6 percent?

1 MR. GARDNER: Objection. Lack of  
2 foundation. Objection.

3 (Thereupon, the court reporter  
4 clarified.)

5 MR. GARDNER: Objection. Form.

6 THE WITNESS: The way this reads --

7 BY MS. GOLDSTEIN:

8 Q I just want to know if you agree that 4.7  
9 to 6.9 percent for the marriage rates, if you  
10 agree that is similar to the 11.6 to 12.6 rates  
11 for the citizenship question for non-Hispanic  
12 blacks and Hispanics?

13 MR. GARDNER: Same objections.

14 THE WITNESS: You are taking it out of  
15 context of how this was written, but you're asking  
16 me where it is comparing three sets of numbers  
17 with a group of numbers which I count down below.  
18 You're asking me to isolate two or three of those  
19 numbers and make a comparison, which is taking  
20 this paragraph out of context. So if you're  
21 asking me simply to say is that comparable, the  
22 answer would be, they are dissimilar.



1 BY MS. GOLDSTEIN:

2 Q Okay. And are you aware -- and that last  
3 half of that last paragraph that we've just been  
4 reading lists a number of estimates that this memo  
5 says showed similar nonresponse rate ranges. Are  
6 you aware or have you seen any evidence that those  
7 questions add a racially or ethnically  
8 differential response rate?

9 A I don't recall. I don't know if I saw  
10 that.

11 Q Let's go to the next page. So let's go  
12 to the middle of that first paragraph. It says,  
13 "However, Census was not able to isolate what  
14 percentage of decline that was caused by the  
15 inclusion of a citizenship question rather than  
16 some other aspect of the long form survey."

17 Do you see that?

18 A I see that sentence.

19 Q Now, if we go back over to 1280, this is  
20 Exhibit 21.

21 A Page 1280, yeah. Got it.

22 Q That last sentence, "Census is isolating

1 rates for the citizenship question are much  
2 greater than comparable rates for other  
3 demographic variables like sex, birth date/age and  
4 race/ethnicity, data not shown."

5 Do you see that?

6 A I wasn't with you. Whether the response  
7 is by mail-in questionnaire or --

8 Q No. The very last line of the last  
9 paragraph in B1.

10 A Right. But there's a full sentence that  
11 starts with "whether."

12 Q Sure.

13 A "The response is by mail-in questionnaire  
14 or ISR instrument and item response -- nonresponse  
15 rates for citizenship question are much greater  
16 than the comparable rates for other demographic  
17 variables like sex, birth/age, race/ethnicity  
18 not" -- "data not shown."

19 Q Have you seen any empirical data that  
20 contradicts this analysis on Page 1280?

21 A No.

22 Q And, to your knowledge, has anyone in

1 Commerce seen any empirical data or studies that  
2 contradict the Census Bureau's analysis on  
3 Page 1280?

4 A Not that I'm aware of.

5 Q And that includes Section B2 on  
6 self-response rates, correct?

7 A Right. And it's interesting, because  
8 this talks about -- well, not being asked that  
9 question.

10 Q And that includes Section B2 on  
11 self-response rates?

12 A Well, we only looked at that one little  
13 part of -- if you want --

14 Q That one little part of that?

15 A -- me to take the --

16 Q That one little part of the sentence.

17 A What's the question? You'd rather me --

18 Q Sure. Let me rephrase it. Let me re-ask  
19 it then.

20 Have you seen any -- apart from the  
21 Census Bureau memos, have you seen any empirical  
22 data or studies that contradict the

1 Census Bureau's analysis of self-response rates  
2 with respect to the citizenship question?

3 A Not that I'm aware of.

4 Q And, to your knowledge, has anyone in  
5 Commerce seen any empirical data or studies that  
6 contradict the self-response rate analysis that  
7 the Census Bureau put forth in Section B2 on  
8 Page 1280?

9 Just asking what you know.

10 A I don't know.

11 Q And if you go to Page 1281, let me ask  
12 this more generally so we don't have to bother  
13 with the documents.

14 Have you seen -- other than the materials  
15 that the Census Bureau prepared for you, the Abowd  
16 memos that we've been talking about a lot today,  
17 have you seen any scientific studies or data that  
18 contradict those analyses?

19 Have you --

20 A These specific analyses, not that I'm  
21 aware of.

22 Q And, to your knowledge, has anyone in

1 Commerce?

2 A I don't know. I can't speak to anybody  
3 in Commerce -- everybody in Commerce.

4 Q I'd have to speak to the other people in  
5 Commerce who were involved, correct?

6 A Correct.

7 Q To see if they saw other science that you  
8 haven't seen?

9 MR. GARDNER: Objection to form.

10 THE WITNESS: Yes.

11 BY MS. GOLDSTEIN:

12 Q Okay. So let's go back to the decision  
13 memo, and let's go to -- you see where it says  
14 "Option C"?

15 A Yes, ma'am.

16 Q So in the middle of that paragraph,  
17 Secretary Ross writes, "That Census Bureau  
18 analysis showed that between 28 and 34 percent of  
19 citizenship for self-responses for persons that  
20 administrative records show are noncitizens are  
21 inaccurate."

22 Did I read that correctly?

1 Q Sure.

2 A -- and tie it back.

3 Q So let's step away from the document for  
4 a second. It sounds like you just testified -- I  
5 just want to make sure I understand -- that the  
6 Census wanted an accurate and complete count,  
7 correct?

8 A The Census wants?

9 Q Or I'm sorry. Commerce wants an accurate  
10 and complete count?

11 A A complete and accurate census, yes.

12 Q And that the Secretary's goal in choosing  
13 between these options, he wanted to pick an option  
14 that would provide a great amount of accuracy,  
15 correct?

16 A I can't speak for the -- now you're  
17 asking me to speak for the Secretary.

18 Q To your knowledge, you talked to the  
19 Secretary?

20 A Yes.

21 Q You know what the Secretary prioritized,  
22 correct?

1 A Correct.

2 Q Accuracy was important to the Secretary?

3 A Complete and accurate were important to  
4 the Secretary.

5 Q And the Census Bureau concluded that  
6 Option D was not the most accurate option,  
7 correct?

8 If you're not sure, you can tell me.  
9 We'll go back to the document.

10 You want to read my question one more  
11 time? Thanks.

12 (Thereupon, the reporter read the record  
13 as requested.)

14 THE WITNESS: But this -- okay.

15 BY MS. GOLDSTEIN:

16 Q Correct?

17 A In the opinion of the Census Bureau, this  
18 is opinion, it's not conclusive fact --

19 Q I'm not asking for conclusive fact. The  
20 Census Bureau --

21 A Their opinion was --

22 Q -- concluded that the most accurate

1 option was not Option D, correct?

2 A In their opinion, yes.

3 Q So let's turn the page.

4 A Do you not want to discuss, "This  
5 approach would maximize the ability to match the  
6 responses to the administrative records"?

7 Q We are running out of time, Under  
8 Secretary. Let's keep going. Let's go to the  
9 next page.

10 A But I think there's a lot in this letter  
11 that you're not --

12 Q I know. I've only got -- you want to  
13 stay longer? If you're going to consent to it, I  
14 will absolutely ask you more.

15 MS. GOLDSTEIN: Consent?

16 MR. GARDNER: No. Keep cherry picking.  
17 Go for it.

18 BY MS. GOLDSTEIN:

19 Q So let's go back to the top page of this  
20 document, which is 1371. "It is my judgment that  
21 Option D will provide DOJ with the most complete  
22 and accurate CVAP data in response to its



1 request."

2 Did I read that correctly?

3 A Yes, ma'am.

4 Q The Census Bureau concluded that Option D  
5 would not provide DOJ with the most complete and  
6 accurate CVAP data in response to its request,  
7 correct?

8 A In their judgment. And this is the  
9 Secretary's judgment.

10 Q I just need to make the record clear.  
11 So in the Census Bureau's judgment,  
12 Option D would not provide DOJ with the most  
13 complete and accurate CVAP data, correct?

14 A Your question again?

15 Q So in the Census Bureau's judgment,  
16 Option D would not provide DOJ with the most  
17 complete and accurate CVAP data, correct?

18 A I don't want to speak for the Census, so  
19 I want to make -- if it's in data.

20 Q Okay. So let me direct you to the right  
21 place. So why don't you go to 9816. It's the  
22 last page of that March 1 memo, and in this --

1 Q I'd have to ask him?

2 A Please.

3 Q And then it says, the next full sentence,  
4 "But no one provided evidence that reinstating a  
5 citizenship question on the decennial census would  
6 materially decrease response rates among those who  
7 generally distrusted government and government  
8 information collection efforts, dislike the  
9 current administration or fear of law  
10 enforcement."

11 Do you see that?

12 A Yes.

13 Q You didn't ask the Census Bureau to test  
14 that question, correct?

15 A The Census Bureau indicated that they  
16 felt the question had been tested.

17 Q Now, this says that no one provided  
18 evidence that reinstating the question -- I'm just  
19 going to paraphrase -- that reinstating the  
20 question in this climate with these people who  
21 generally distrusted government would decrease  
22 response rates, correct?

1           A    That's what it says, which is  
2 paraphrased.

3           Q    Yeah.

4           A    You read it verbatim before.

5           Q    But fair enough, right?

6                   No one in Commerce asked the  
7 Census Bureau to provide that evidence through  
8 additional testing, correct?

9                   MR. GARDNER:  Objection.  Calls for  
10 speculation.  Lack of foundation.  
11 BY MS. GOLDSTEIN:

12          Q    To your knowledge?

13          A    The Census Bureau -- excuse  
14 me -- Commerce asked the Census Bureau whether  
15 they felt the question was adequately tested.

16          Q    And Secretary Ross felt that there was no  
17 evidence, at least with respect to this  
18 implication of the citizenship question, correct?

19          A    I can't tell you what he felt or anything  
20 else.

21          Q    That's just what he wrote --

22          A    We know what he wrote.

1 Q Okay. And you never asked the  
2 Census Bureau to run tests on the impact of  
3 reinstating the citizenship question on this  
4 population described in that sentence we've just  
5 been reading, correct?

6 A We asked them if they felt that this  
7 question had been tested appropriately enough to  
8 be put on the 2020 decennial.

9 Q I'm just going to try my question one  
10 more time.

11 You didn't ask the Census Bureau to  
12 provide evidence that reinstating the citizenship  
13 question would impact or -- the response rates on  
14 the population that is referenced in that sentence  
15 we've just been reading, correct?

16 A So if --

17 Q I just want to know whether you asked for  
18 testing on that subject.

19 A If you are asking me if I asked the  
20 Census to provide testing on response rates of  
21 people who -- among those who generally distrust  
22 government and government information collected

1 efforts, dislike the current political climate, or  
2 fear law enforcement, I did not do that.

3 Q And, to your knowledge, did anyone at  
4 Commerce ask the Census Bureau to provide evidence  
5 of that?

6 A I do not know.

7 Q Okay. So let's go to the last sentence  
8 of that paragraph. "While it is possible that  
9 this belief is true, there is no information  
10 available to determine the number of people who  
11 would, in fact, not respond due to a citizenship  
12 question being added and no one has identified any  
13 mechanism for making such a determination."

14 Do you see that?

15 A I do.

16 Q Did you ask the Census Bureau if they  
17 could design a test to make this determination?

18 A No. I did not ask them to make -- to  
19 create a test.

20 Q And, to your knowledge --

21 A I --

22 Q I just have to ask it for the record.

1           -- did anyone at Commerce ask the  
2   Census Bureau to design a test to make this  
3   determination?

4           A   Not that I know of.

5           But I repeat, we asked the Census Bureau  
6   if they felt that this question had been  
7   thoroughly tested on a number of occasions.

8           Q   Okay. Let's go to the next page.

9           And I want to go to the middle of that  
10   first paragraph. The same former director  
11   noted -- do you see where I'm starting? "In the  
12   years preceding" --

13          A   Yes.

14          Q   -- "certain interest groups consistently  
15   attacked the census and discouraged  
16   participation."

17          Do you know what Secretary Ross is  
18   referring to here?

19          Just with respect to those interest  
20   groups, do you know what he's referring to?

21          MR. GARDNER: Objection. Calls for  
22   speculation.

1 BY MS. GOLDSTEIN:

2 Q Have you seen studies or other evidence  
3 regarding that?

4 MR. GARDNER: Same objection.

5 THE WITNESS: This is going to be a fuzzy  
6 answer, so I --

7 BY MS. GOLDSTEIN:

8 Q Sure.

9 A There have been conversations with Census  
10 that in past decennials, that there have been  
11 special interest groups of certain varieties that  
12 have been negative about the census, but I cannot  
13 tell you technical details on any of that, but I  
14 do recall having conversations about that topic.

15 Q Do you remember who those conversations  
16 were with?

17 A It would have to be the Census  
18 leadership.

19 Q Okay. But you don't recall seeing any  
20 documents related to that, correct?

21 A No. But I don't remember.

22 Q Okay. And right below that it says,

1 "While the reinstatement of a citizenship question  
2 may be a data point on which these interest groups  
3 seize in 2019, past experience demonstrates that  
4 it is likely efforts to undermine the decennial  
5 census will occur -- will occur again, regardless  
6 of whether the decennial census includes a  
7 citizenship question."

8 Now, I only want to know, have you seen  
9 any empirical data that relates to that point?

10 A No.

11 Q And do you know if Secretary Ross has  
12 seen any empirical data --

13 MR. GARDNER: Objection.

14 BY MS. GOLDSTEIN:

15 Q -- relating to that point?

16 MR. GARDNER: Calls for speculation.

17 THE WITNESS: I'm not going to speak for  
18 Secretary Ross.

19 BY MS. GOLDSTEIN:

20 Q I need to speak to him --

21 MR. GARDNER: Objection

22 BY MS. GOLDSTEIN:



1 citizenship question request before December, just  
2 to make sure you would have enough time?

3 A And I think I said earlier I'm not  
4 exactly sure what was the first time we discussed  
5 it.

6 Q But you did not discuss what those steps  
7 would be in terms of the legal review and the  
8 technical review and the policy decision until  
9 mid-December; is that right?

10 A Correct.

11 Q Did anyone ever ask or instruct you not  
12 to reveal to the Census Bureau that there may be a  
13 request for a citizenship question on the census  
14 or to delay informing the Census Bureau?

15 A No. And as I said, I don't know. I  
16 could have discussed that with them early. It  
17 just was not in the priorities of the things we  
18 were discussing.

19 Q So no one ever instructed you or asked  
20 you not to inform the Census Bureau?

21 A No.

22 Q So you testified that during that fall of

1 Q Do you recall ever asking anyone at  
2 Census about the effect of the -- the potential  
3 effect of the citizenship question on the budget,  
4 prior to the December 12th DOJ letter?

5 A No. When we did the budget, we discussed  
6 what percentages we wanted to use as NRFU numbers,  
7 and we actually said we -- we needed to put more  
8 into those numbers and make sure we had enough for  
9 NRFU, we had enough for the partnerships, enough  
10 for those kind of things, but -- and we put  
11 contingencies in those numbers. But there was  
12 never a --

13 Q But before the DOJ letter was received by  
14 Census, did you ever look into what the effect of  
15 the citizenship question could be on the costs of  
16 NRFU?

17 A No.

18 Q You understand that the stated  
19 justification for the citizenship question by the  
20 Secretary is Voting Rights Act enforcement; is  
21 that right?

22 A That is what the letter from DOJ

1           What time frame are we talking about?

2       I'm not sure which communications you're referring  
3       to.

4           A     I have no idea what you're -- you're  
5       asking me the questions, and you're asking me what  
6       time frame we're talking about. This has gotten  
7       off the rails a little.

8           Q     It's late in the day.

9           A     And I really want to be as helpful as  
10      possible, so, please.

11          Q     Understood. Understood.

12                So let's say March 2018, so after the  
13      March 1st memo, before the March 26th decision,  
14      and from understanding of the documents, that's  
15      the time period when he was doing a lot of the  
16      discussions with stakeholders. So during that  
17      time period, did he have communications with DOJ  
18      about the citizenship question?

19          A     I don't know the answer to that.

20          Q     You don't know?

21          A     I do not know the answer to that.

22          Q     Okay. Do you know whether he had any

1 stakeholder conversations with any Voting Rights  
2 Act -- I should say organizations interested in  
3 Voting Rights Act enforcement, such as, for  
4 example, the ACLU, MALDEF, any other such groups  
5 that occasionally bring Section 2 enforcement  
6 actions?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: I would have to refer to  
9 the list of everybody and want you to ask the  
10 question.

11 BY MS. BOUTIN:

12 Q Okay. But do you recall any, offhand, as  
13 you sit here?

14 A No, I don't.

15 Q Did you ever suggest to Secretary Ross or  
16 Earl Comstock that they hold stakeholder  
17 conversations about the citizenship  
18 questions -- question -- excuse me -- with DOJ or  
19 any groups interested in Voting Rights Act  
20 enforcement?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: We certainly talked and

1 took great, earnest interest in making sure we had  
2 a broad -- a broad and comprehensive group for the  
3 Secretary to talk to.

4 BY MS. BOUTIN:

5 Q But you don't remember any suggestion, as  
6 far as stakeholders go, whose specific interests  
7 were Voting Rights Act enforcement?

8 A I can't speak to -- I don't know that  
9 somebody wasn't spoken to that are --

10 Q But you don't know of anyone?

11 A Not to my knowledge.

12 Q Earlier, you stated that there are other  
13 instances in which an agency has refused to meet,  
14 and you referred to as an example -- you referred  
15 to OMB as an example. What was that in reference  
16 to.

17 A The race and ethnicity question, which is  
18 a question that its form is dictated by a group  
19 called oh OIRA, which is part of OMB. And because  
20 the question needed to be -- the questions needed  
21 to be done by a certain point when we're talking  
22 about theses timelines, OIRA would have had to

1 change how it -- it mandated race and ethnicity to  
2 be viewed and how it would be broken out. And so  
3 we were getting towards -- closer to them, and we  
4 would call and say, do you have an update, do you  
5 want us to come meet? And they'd say no, we don't  
6 have an update. At that point, we're not --

7 Q Had there been previous meetings prior to  
8 their refusal to meet?

9 A They did not meet. I don't want to go  
10 all the way to they refused -- they refused to  
11 meet, but they did not meet. Do I know if there  
12 were any meetings before that?

13 Q About the race and ethnicity question?

14 A Not prior to my arrival, but prior to  
15 that, I don't -- not after my arrival. Prior to  
16 that, I don't know. I do know that over the  
17 years, there was communication and correspondence,  
18 that they worked closely together.

19 Q Okay.

20 A So I believe they did meet prior.

21 Q Okay. So did they -- and I'm sorry. You  
22 say OIRA is the name of --

1           Okay. Did -- what -- was the final  
2       result in that process such that OIRA got what  
3       they wanted? Did the race and -- let me rephrase.

4           Did the race and ethnicity question end  
5       up in the form that they had advocated?

6           A     OIRA, yes.

7           Q     Okay. This question was asked earlier,  
8       but I don't think -- I think things got  
9       sidetracked.

10           Were you surprised by Secretary Ross's  
11       decision to add the citizenship question against  
12       the recommendation of the Census Bureau?

13           A     It wasn't my place to be surprised or  
14       not. It was my place to do --

15           Q     But were you surprised?

16           A     -- what the Secretary asked.

17           Q     But were you surprised?

18           A     I was not surprised or not surprised. I  
19       said, okay, that's the decision, now we need to  
20       say, how do we implement it? How do we go  
21       forward?

22           Q     So I think without looking at them, I

1 importance of concerns from the feet on the  
2 ground.

3 A I'm sorry. I got -- give me the first  
4 part of what you're talking about.

5 Q Sure. Sure.

6 So I was just recalling earlier  
7 testimony, and it -- we were talking generally  
8 about meetings with Secretary Ross, and one of the  
9 phrases that you used was the feet on the ground,  
10 and how it was important to consider concerns  
11 stated from the feet on the ground.

12 A Yeah.

13 Q What do you mean -- what do you mean by  
14 feet on the ground?

15 A And Census refers to it as boots on the  
16 ground. That's what they always say when they  
17 talk about those people out in the field  
18 conducting NRFU. The enumerators, I should say.

19 Q Are you familiar with the Center For  
20 Survey Management?

21 A Not particularly.

22 Q I'm sorry. Center For Survey



1 Measurement?

2 A Not intimately.

3 Q Okay. I will represent to you that it is  
4 an office within Census, and I'd like to show  
5 you --

6 A Please show me.

7 Q -- a September 20, 2017 memorandum for  
8 Associate Director Research and Methodology, and I  
9 think it will be Exhibit 29.

10 (Plaintiffs' Exhibit 29, September 20,  
11 2017 memorandum, was marked.)

12 THE WITNESS: I was afraid you were going  
13 to give me that without a number and I couldn't  
14 take it.

15 May I clarify, Rory, my last statement?

16 BY MR. ADAMS:

17 Q Yes.

18 A When you said the Center for Survey  
19 Measurement, I thought you were talking about an  
20 outside concern. As a group inside of the  
21 research and methodology, they have all kinds of  
22 teams.

1 BY MR. ADAMS:

2 Q Okay.

3 A So I -- I recognize they do all these  
4 things, but I -- I did not understand the context  
5 in which you were talking.

6 Q Okay.

7 A So I would not say to you I've never seen  
8 any work by CSM before, but there's lots of  
9 acronyms, as you can well imagine.

10 Q I can.

11 Are you familiar with this document?

12 A No. I am not familiar with this  
13 document.

14 Q I'd like to read a number of statements  
15 in the document and ask if you are familiar  
16 with -- in general, with the concerns that are  
17 expressed in the document. So beginning at the  
18 bottom of the first page, "FRs, field" --  
19 sorry -- "field representatives, and FS is field  
20 supervisors, emphasized facing a, 'new phenomenon'  
21 in the field, and reported that respondent's  
22 fears, particularly among immigrant respondents,

1 have increased markedly this year. Respondents  
2 reported being told by community leaders not to  
3 open the door without a warrant signed by a judge,  
4 and CSM researchers observed respondents  
5 falsifying names, dates of birth and other  
6 information on household rosters."

7 Were you aware that these observations  
8 had been made in the field in the context of CSM's  
9 various research projects?

10 A I understood the concerns were made, but  
11 not under this particular research paper or other  
12 things, and I think we've seen today where -- but  
13 this is from the field itself. I have not seen  
14 this document, but we have talked about concerns.

15 Q Turning to the third page, which is Bates  
16 number 2448, the very top, "It should be noted  
17 that this level of deliberate falsification of the  
18 household roster and spontaneous mention of  
19 concerns regarding negative attitudes towards  
20 immigrants is largely unprecedented in the  
21 usability interviews that CSM has been conducting  
22 since 2014 in preparation for the 2020 census."

## ACKNOWLEDGEMENT OF DEPONENT

I, KAREN DUNN KELLEY, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

\_\_\_\_\_  
Date\_\_\_\_\_  
KAREN DUNN KELLEY

Joshua E. Gardner, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.  
United States Department of Commerce, et al.

# EXHIBIT G

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

- - - - - x  
ROBYN KRAVITZ, et al., :  
Plaintiffs, :  
vs. : Civil Action No.  
U.S. DEPARTMENT OF COMMERCE, : 8:18-cv-01041-GJH  
et al., :  
Defendants. :  
- - - - - x Global  
LA UNION DEL PUEBLO ENTERO, : objection:  
et al., : 401; 403

Plaintiffs, :  
vs. : Civil Action No.  
WILBUR L. ROSS, sued in his : 8:18-CV-01570-GJH  
official capacity as U.S. :  
Secretary of Commerce, et al., :  
Defendants. :

- - - - - x

VIDEOTAPED DEPOSITION OF: DAVID SANFORD LANGDON  
DATE: Friday, October 26, 2018  
TIME: 9:08 a.m.  
LOCATION: Covington & Burling  
850 Tenth Street, D.C.  
Washington, D.C.  
REPORTED BY: Denise M. Brunet, RPR,  
Reporter/Notary  
Veritext Legal Solutions  
1250 Eye Street, D.C., Suite 350  
Washington, D.C. 20005

A P P E A R A N C E S

On behalf of the Kravitz Plaintiffs:

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Covington & Burling, LLP

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On behalf of New York Immigration Coalition:

DYLAN SCOT YOUNG, ESQUIRE

Arnold & Porter Kaye Scholer, LLP

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[REDACTED]

[REDACTED]

[REDACTED]

(Appearances continued on the next page.)

1 APPEARANCES (continued):

2  
3 On behalf of the Lupe Plaintiffs:

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5 ERI ANDRIOLA, ESQUIRE

6 Asian Americans Advancing Justice

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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13 On behalf of the State of California:

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15 (via telephone)

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22 (Appearances continued on the next page.)



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21  
22 (Appearances continued on the next page.)

1 APPEARANCES (continued) :

2

3 ALSO PRESENT: B.J. Altvater

4 Eric Xi

5 Glen Fortner, Videographer

6

7

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9

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C O N T E N T S

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Counsel for Kravitz Plaintiffs	11
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1 - E-mail from Herbst to Langdon dated 2/2/17	71
2 - E-mail from Langdon to Comstock dated 3/10/17	93
3 - E-mail from Langdon to Comstock and Herbst dated 3/15/17	95
4 - E-mail chain starting with e-mail from Comstock to Ross dated 5/2/17	125
5 - E-mail from Comstock to Ross dated 3/10/17	137
6 - E-mail chain starting with e-mail from Langdon to Blumerman dated 5/24/17	143
7 - E-mail from Langdon to Comstock and Herbst dated 5/24/17	171

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1	DEPOSITION EXHIBITS:	PAGE:
2	8 - E-mail chain starting with e-mail from	
3	Langdon to Comstock and Herbst dated	
4	5/24/17	190
5	9 - Memo from Ross dated 6/21/18	205
6	10 - E-mail chain starting with e-mail from	
7	Langdon to Park-Su dated 6/22/18	211
8	11 - E-mail chain starting with e-mail from	
9	Uthmeier to Langdon dated 1/29/18	232
10	12 - Letter and attachment from Gary to	
11	Thompson dated 11/4/16	249
12	13 - E-mail from Quinley to Kelley dated	
13	1/10/18	253
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16	15 - Questions on the January 19 draft	
17	census memo on the DOJ citizenship	
18	question reinstatement request	264
19	16 - E-mail chain starting with e-mail from	
20	Comstock to Langdon, et al., dated	
21	1/30/18	268
22	(Exhibits continued on the next page.)	

1 DEPOSITION EXHIBITS: PAGE:

2 17 - E-mail chain starting with e-mail from  
3 Abowd to Reist and Lamas dated 1/31/18 268

4 18 - Memo from Abowd dated 1/19/18 296

5

6 (\*Exhibits attached to the transcript.)

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We are  
3 going on the record at 9:08 a.m. on October 26th,  
4 2018. Please note the microphones are sensitive  
5 and may pick up whispering, private conversations  
6 and cellular interference. Please turn off all  
7 cell phones or place them away from the  
8 microphones as they can interfere with the  
9 deposition audio. Audio and video recording will  
10 continue to take place unless all parties agree to  
11 go off the record.

12 This is media unit 1 of the  
13 video-recorded deposition of David Langdon taken  
14 in the matter of Robyn Kravitz, et al., v. U.S.  
15 Department of Commerce, et al., and La Union Del  
16 Pueblo Entero, et al., v. Wilbur Ross, et al.,  
17 filed in the United States District Court for the  
18 District of Maryland.

19 This deposition is being held at  
20 Covington & Burling, LLP, located at 850 10th  
21 Street, Northwest, Washington, D.C.

22 My name is Glen Fortner from the firm

1 Veritext, and I am the videographer. The court  
2 reporter is Denise Brunet from the firm Veritext.  
3 I am not related to any party in this action, nor  
4 am I financially interested in the outcome.

5 Counsel and all present in the room and  
6 everyone attending remotely will now state their  
7 appearances and affiliations for the record. If  
8 there are any objections to proceeding, please  
9 state them at the time of your appearance,  
10 beginning with the noticing attorney.

11 MR. DURAISWAMY: Shankar Duraiswamy for  
12 the Kravitz plaintiffs.

13 MR. ALTVATER: B.J. Altvater, law clerk,  
14 Covington & Burling, for the Kravitz plaintiffs.

15 MS. SHAH: Niyati Shah for the Lupe  
16 plaintiffs and the District of Maryland case  
17 number 8:18-01570.

18 MR. YOUNG: Dylan Young from Arnold &  
19 Porter for the NYIC plaintiffs.

20 MR. CANNON: Michael Cannon, U.S.  
21 Department of Commerce agency counsel.

22 MS. WELLS: And Carlotta Wells from the

1 Department of Justice representing the defendants.

2 THE VIDEOGRAPHER: The court reporter  
3 will please swear in the witness.

4 WHEREUPON,

5 DAVID SANFORD LANGDON,  
6 called as a witness, and having been sworn by the  
7 notary public, was examined and testified as  
8 follows:

9 EXAMINATION BY COUNSEL FOR KRAVITZ PLAINTIFFS  
10 BY MR. DURAISWAMY:

11 Q Good morning, Mr. Langdon. As you just  
12 heard, my name is Shankar Duraiswamy. I represent  
13 the plaintiffs in one of the cases that we're here  
14 about today. Let me start with a simple question.

15 Could you please state and spell your name for the  
16 record.

17 A State and spell?

18 Q Yes.

19 A David Sanford Langdon. D-A-V-I-D,  
20 S-A-N-F-O-R-D, L-A-N-G-D-O-N.

21 Q And could you provide your home and work  
22 addresses for the record, please?



1           At a later point in time, you received a  
2     master's in applied economics from Johns Hopkins;  
3     is that right?

4           A     Yes.

5           Q     That was in 2003?

6           A     Yeah.

7           Q     Is there any other educational background  
8     that we've missed?

9           A     In terms of university education, no.

10          Q     What about -- how about non-university  
11     education?

12          A     I mean, all federal employees, we take,  
13     you know, training courses and, you know,  
14     continuing education.

15          Q     Understood. Why did you decide not to  
16     finish the degree in Spain?

17          A     It was a personal lifestyle decision. So  
18     my later wife and I decided that we wanted to look  
19     for work in the United States, settle down, and we  
20     chose Washington, D.C.

21          Q     And as I understand it, when you settled  
22     down in D.C., you took a job with the Bureau of

1 Labor Statistics; is that right?

2 A Correct.

3 Q What was your job there?

4 A I was an economist, a staff economist, at  
5 BLS. I worked on the current employment  
6 statistics program, which is part of the Office of  
7 Employment and Unemployment Statistics.

8 Q How did you end up in that job?

9 A They were hiring a lot. This was 1998.  
10 I interviewed -- I started in July, interviewed in  
11 January. And they had a lot of open positions,  
12 and I chose that office to work in.

13 Q And how long did you have that position?

14 A Around seven years.

15 Q What were your job responsibilities?

16 A So we -- this office was in charge of  
17 producing the monthly payroll survey numbers. So  
18 there's two major sets of employment data that go  
19 in the monthly jobs report, typically published on  
20 the first Friday of the month. It's a principal  
21 federal economic indicator.

22 My office was responsible for the editing

1 of microdata, the preparations of the analysis,  
2 and discussion and economic analysis of them with  
3 senior BLS management. We also did --

4 THE REPORTER: Senior --

5 THE WITNESS: BLS, Bureau of Labor  
6 Statistics. It's the acronym.

7 Senior BLS management. And we did  
8 research reports as well.

9 BY MR. DURAISWAMY:

10 Q And that describes your responsibilities  
11 during the entire seven years that you had that  
12 position?

13 A Yeah. I mean, I became a supervisory  
14 economist. So at some point in that time -- I  
15 became a team lead and, later, a supervisory  
16 economist. So, you know, staff economists, you  
17 know, reported to me. But we did -- it was the  
18 same office, same, you know, general  
19 responsibilities.

20 Q Did you have any responsibility for the  
21 design or administration or execution of the  
22 payroll survey?

1           A       Yeah.

2           Q       Could you describe what your  
3 responsibilities were?

4           A       So we -- I mean, it varied, really. I  
5 mean, we worked with the data collection team.  
6 There's a separate collection data team. So the  
7 monthly payroll surveys is a massive business  
8 survey. It goes to around 300,000 U.S. -- between  
9 300 and 400,000 U.S. business establishments every  
10 month, and it collects information on their  
11 payrolls, so employment, female employment, total  
12 payroll dollars, total hours worked, and then  
13 manufacturing total overtime hours.

14                   And we -- during that period, we went  
15 through a major transition in how the -- and the  
16 industry framework that was used to assign a  
17 company to a specific industry within  
18 manufacturing, a shift from the standard  
19 industrial classification system to the North  
20 American industry classification system. So we  
21 were involved with that.

22                   We were involved with a potential

1 decision to remove -- to stop collecting data on  
2 female employment --

3 THE REPORTER: Stop collecting data on...

4 THE WITNESS: Data on the number of women  
5 employed by companies. So, I mean, it was a  
6 variety of things.

7 BY MR. DURAISWAMY:

8 Q Did you have any prior background in  
9 survey methodology or design?

10 A Some. I mean, I took classes on it when  
11 I was in Seville. So I took classes on survey  
12 methodology and survey design. And I learned a  
13 lot on the job.

14 Q Did you have any involvement with any  
15 other surveys or survey data while you were there?

16 A On BLS? As an analyst. I used data from  
17 other BLS programs in research reports I did. So  
18 I used data -- we worked closely with the people  
19 on the current population survey. So it's a  
20 monthly household survey that actually the Census  
21 Bureau administrates -- administers, but BLS is  
22 one of the major users.

1 Q Other than the current population survey,  
2 did you have any -- did you do any work related to  
3 any other surveys administered by the Census  
4 Bureau during that period of time?

5 A A little bit on the American Time Use  
6 Survey, which is also administered by the Census  
7 Bureau, mostly as an analyst. We used the data.

8 Q So with respect to both of those, you  
9 weren't working at the Census Bureau, you weren't  
10 involved in the execution of the survey --

11 A No.

12 Q -- but you were analyzing the data that  
13 came out of the survey?

14 A Correct.

15 Q Okay. Other than the census surveys, any  
16 other surveys that you had any experience with  
17 while you were at BLS?

18 A No, not that I recall.

19 Q As I understand it, you then moved in  
20 2006 to the Office of Chief Economist at the  
21 Department of Labor; is that right?

22 A Within the Office of the Assistant

1 Secretary for Policy. And the chief -- at that  
2 time, the chief economist was -- this was in the  
3 Bush 43 administration. The chief economist at  
4 that point was housed within that, the policy  
5 office.

6 Q How did you end up in that position?

7 A I applied for the job. There was an  
8 opening on USAJobs. It looked interesting and I  
9 applied for it and got it.

10 Q What were your responsibilities there?

11 A So we -- it varied. It varied quite a  
12 bit. We did a lot of -- principally, a lot of  
13 economic analysis for the Secretary and for her  
14 team. It was Secretary Chao at that point. So  
15 macroeconomic analysis, labor market analysis --

16 THE REPORTER: I'm sorry. Could you slow  
17 down a little bit?

18 THE WITNESS: Sure. I'm sorry.

19 Macroeconomic analysis, labor market  
20 analysis, some of it connected to the policy  
21 agenda of the department at that point.

22 BY MR. DURAISWAMY:

1 jointly between two statistical agencies, and  
2 there's lots of modules to it, and there's an  
3 opportunity for all sorts of conversations about  
4 what content there might be in specific pieces and  
5 for what purposes. So, I mean, really -- I just  
6 can't answer that.

7 Q Is it fair to say that, generally, the  
8 Labor Department determined the priorities for  
9 what it needed from survey data -- for what the  
10 Labor Department needed?

11 A The Labor Department sets its policy  
12 priorities, but as far as the content goes, I  
13 mean, I think it just -- it depends.

14 Q Any other work related to surveys while  
15 you were at the Labor Department in the Office of  
16 Chief Economist?

17 A Not that I recall.

18 Q Okay. And your tenure there ended around  
19 2011; is that right?

20 A Yep.

21 Q And that's when you transitioned to the  
22 Department of Commerce, correct?



1           A       Correct.

2           Q       What brought about that transition?

3           A       Same answer as previously. So I learned  
4 about a job posting. It was on USAJobs. I  
5 applied for it, interviewed and was accepted.

6           Q       What was the job?

7           A       It was as a senior economist in the  
8 Economics and Statistics Administration and then,  
9 within the Economics and Statistics  
10 Administration, the Office of the Chief Economist.

11          Q       What -- well, let me do this first. Is  
12 that the position you still hold today?

13          A       No.

14          Q       Can you just walk me through the  
15 different positions that you've held in the  
16 Commerce --

17          A       Yeah. It can be a --

18          Q       -- Department since 2011?

19          A       -- bit confusing. So I --

20          Q       Sorry. I just want to --

21               MR. DURAISWAMY: Do you need him to slow  
22 down?

1 THE REPORTER: You're going fast and  
2 you're talking over each other.

3 Can you just walk me through the  
4 different position that you've held in the  
5 Commerce Department in 2011 --

6 MR. DURAI SWAMY: Since 2011.

7 BY MR. DURAI SWAMY:

8 Q So -- sorry, Mr. Langdon. If you could  
9 do you -- you talk fast, as I do naturally. If  
10 you could just try to slow down and wait till I  
11 get my question out and then start, that will make  
12 it easier --

13 A Understood.

14 Q -- for Denise, I think.

15 So, yeah. Could you just walk me through  
16 the different positions you've held at the  
17 Commerce Department since 2011?

18 A Yeah. I started at Commerce in  
19 January 2011. I was hired as a senior economist  
20 in -- the acronym is ESA. And I continued in that  
21 position until about a month or so ago, actually.  
22 But in addition to that, in October of 2012, I was

1 asked to also go on detail, essentially a  
2 part-time detail, in the office of policy --  
3 Office of Policy and Strategic Planning, which is  
4 part of the Office of the Secretary of Commerce.  
5 So I was basically doing two jobs. And I was on  
6 detail in the policy office and I was an economist  
7 in ESA.

8 I actually subsequently became a  
9 supervisory economist in ESA. So I had a staff.  
10 So I was managing a staff of economists. And then  
11 I was doing policy work under various Secretaries.  
12 And I've continued to do that policy work up until  
13 now.

14 Because of a reorganization that was  
15 announced in March of 2017, the Office of the  
16 Chief Economist was eliminated, and the staff of  
17 that office and actually the staff of ESA were  
18 reassigned to different positions in the  
19 Department of Commerce, some in the Census Bureau,  
20 some in the Bureau of Economic Analysis and some  
21 in other areas.

22 I was assigned to -- actually, moved

1 full-time as a permanent employee of the Office of  
2 Policy and Strategic Planning, and so that's my  
3 single job now.

4 And there's a lot of overlap of sort of  
5 research and responsibilities and content area  
6 between those two jobs.

7 Q So just to be clear, from about  
8 October 2012 until March 2017, you essentially had  
9 a dual role as a senior economist in ESA and as a  
10 senior policy advisor; is that fair to say?

11 A That's exactly right.

12 Q In the Office of Policy and Strategic  
13 Planning?

14 A Yes.

15 Q Is it possible to estimate roughly how  
16 much of your time was devoted to one role versus  
17 another during that period of time?

18 A It varied a lot. It varied by  
19 assignment, by work flow. I mean, at times -- it  
20 was never 50/50. Actually, somebody joked it was  
21 more like 70/70.

22 Q What were your responsibilities with

1 respect to ESA?

2 A As a policy advisor?

3 Q I guess I'm referring to the first role  
4 you identified as a senior economist in ESA.

5 A So think about the -- sort of talk about  
6 the structure of ESA. Okay? So ESA is an  
7 umbrella -- or was an umbrella organization that  
8 had three pieces underneath: The Census Bureau,  
9 the Bureau of Economic Analysis, and then the  
10 small Office of the Chief Economist. And so the  
11 chief economist's office essentially was -- like  
12 an on-call research -- a group of research -- a  
13 research agency within the Department of Commerce  
14 that would largely support the missions of the two  
15 statistical agencies. So -- and also, you know --  
16 they would also conduct research to support  
17 whichever administration's policy agenda.

18 So I, or my staff later on, would do a  
19 lot of either internal or external research  
20 reports on all sorts of topics. A lot of mine had  
21 a labor focus, and there was a strong demand for  
22 that. But the office itself, I mean, did a

1 variety of research.

2 Q And you said the research was done in  
3 part to support the work of the other two  
4 statistical agencies that fell within the ESA,  
5 correct?

6 A Yeah.

7 Q What kinds of work did you do to support  
8 the work of the Census Bureau?

9 A So, I mean, one thing we could do would  
10 be research reports that would demonstrate the  
11 value or the utility of data that they produced.  
12 So for example, we -- I co-authored a few studies  
13 on the STEM workforce, you know, so the science,  
14 technology, engineering and math workforce. And  
15 for those studies, we used American Community  
16 Survey data a lot, and current population survey  
17 data. So -- and we showed, you know, interesting  
18 analysis you could do about that workforce and  
19 interesting aspects of those data sets.

20 Q Did any of the work you did have an  
21 impact or relate to the content of the surveys  
22 administered by the Census Bureau?

1           A       It related to, yes.

2           Q       Let me try to be more specific. Did it  
3 relate to decisions about what the content of  
4 those surveys should be?

5           A       I'm not -- I'm not sure. Maybe  
6 indirectly. So to be specific, like, one of the  
7 studies we did looked at -- used a variable on the  
8 degree -- the major of -- that bachelor degree  
9 holders had. So, basically, like, the survey form  
10 asked people about their educational attainment.  
11 If you indicated you had a bachelor's degree, you  
12 would receive a subsequent question on what your  
13 first major or second major was. And so our STEM  
14 studies looked at that.

15                   And during a subsequent content review  
16 that I was not involved with for the American  
17 Community Survey, that was one of the questions  
18 that, you know, was up for potential elimination.  
19 And I think -- you know, so there was some overlap  
20 and discussion with, you know, probably Census  
21 Bureau staff about, you know, things along those  
22 lines.

1 looking, you know, one by one, okay, is this --  
2 you know, at every question. Right? But just --  
3 I can't speak specifically about which questions  
4 we had conversations about and which ones we  
5 didn't.

6 Q Well, let me try to narrow it down for  
7 you. Do you recall any work that was done  
8 regarding the uses of the citizenship question on  
9 the ACS survey?

10 A No.

11 Q Do you recall any work that was done  
12 regarding the place of origin questions on the  
13 citizenship survey?

14 A Nope.

15 Q Do you have any reason to believe that  
16 those items would have fallen within the scope of  
17 the work that you all were doing in the Office of  
18 Chief Economist?

19 A We never looked at them specifically. We  
20 used the data sometimes, but we never looked into,  
21 you know, the content review or whether they  
22 should be on the survey or not.



1 Q Well, maybe I misunderstood, but I  
2 thought you told me a minute ago that you were  
3 involved in conversations about the potential uses  
4 of the -- of the --

5 A Correct, and --

6 Q -- questions, correct?

7 A -- I also indicated that, you know, we  
8 looked potentially at the entire survey, but we  
9 didn't -- I can't say that we were involved with  
10 looking at every single question.

11 Q Right. My question now is, do you have  
12 any reason to believe that you would have been  
13 focused on a citizenship question or place of  
14 origin question as part of your efforts to assist  
15 in evaluating the uses of ACS survey?

16 A I don't recall that.

17 Q I know you don't recall. I'm saying, do  
18 you have any reason to believe that you would have  
19 been involved? Is that the type of thing that  
20 potentially the people in the Office of Chief  
21 Economist would have been analyzing or opining on?

22 A Absolutely, but I don't recall it coming

1 up.

2 Q What possible analysis could you imagine  
3 the Office of Chief Economist providing regarding  
4 the utility of the citizenship question?

5 MS. WELLS: Object to the form.

6 BY MR. DURAISWAMY:

7 Q You can answer.

8 A Okay. So a lot of the analysis that was  
9 done at that point was basically around use cases,  
10 so how -- you know, among researchers, the public  
11 states, all the different stakeholders who might  
12 use ACS data would say, okay, well, you know, how  
13 are they -- just what examples are that -- you  
14 know, where the data is being disseminated in some  
15 way, input, created as an input into some sort of  
16 data tool, things like that. So use cases.

17 Q Can you think of any use for the  
18 citizenship question on the ACS survey that  
19 relates to economic/statistical analysis that the  
20 Office of Chief Economist was concerned about?

21 A I can't say to it specifically, but I  
22 mean, throughout -- I mean, when I was at the

1 Labor Department and the Commerce Department, you  
2 know, we would look at labor force status, so  
3 employment, unemployment, labor force  
4 participation. And we certainly looked at it at  
5 times with respect to foreign-born population. So  
6 not as much, maybe, with respect to citizenship  
7 that I can recall, but certainly foreign-born and  
8 unforeign-born. That's a regular thing that's  
9 looked at.

10 Q Do you have an understanding as to why  
11 the citizenship question was included on the ACS  
12 survey?

13 A Do I have an understanding as to why? I  
14 mean, I've looked at the information at times. I  
15 mean, there's a whole Census Bureau report I've  
16 read that outlines all the different federal uses  
17 of that data. So I've certainly looked at that.

18 Q What's your understanding of why the  
19 citizenship question is on the ACS survey?

20 A I mean, there's a -- well, first of all,  
21 there's a historical need for that. I mean, it  
22 dates from the -- I mean, it's been on the census

1 form at different points in time going back  
2 decades. And it's been -- it was a regular part  
3 of the long form of the decennial census. And the  
4 long form eventually became the American Community  
5 Survey. So that content carried over.

6 There's some federal uses tied to it.  
7 The one that pops to mind right now is the DOJ has  
8 used it. But I believe other ones -- there's  
9 other ones as well, other federal uses as well.

10 Q Any that you can remember, sitting here  
11 today?

12 A I can't recall. But there's abundant  
13 online documentation that goes through that.

14 Q Do you have an understanding as to why it  
15 was on the long form before it was on the ACS?

16 A You know, general idea, but I can't speak  
17 specifically to it.

18 Q What's your general idea?

19 A I mean, there's -- you know, when -- it's  
20 one of a variety of demographic -- standard  
21 demographic questions that help people understand  
22 the portrait of the U.S. population, you know,

1 along with sex, age, race, ethnicity, place of  
2 birth, educational attainment, and citizenship.  
3 It's a natural part of the catalog of data you  
4 would need to understand what the U.S. population  
5 looks like nationally on a local level [sic].

6 Q That's your understanding of why it might  
7 have been on the long form, but do you have a  
8 specific understanding as to why it was, in fact,  
9 included in the long form?

10 A No.

11 Q This work that you described in the  
12 Office of the Chief Economist that related to  
13 content reviews for Census Bureau surveys, did any  
14 of that relate to decennial census content  
15 reviews?

16 A No.

17 Q Could you describe your responsibilities  
18 in the office with respect to your role in the  
19 Office of Policy and Strategic Planning from  
20 October 2012 to March 2017?

21 A So the -- there's a team of policy  
22 advisors that supports the director of policy and,

1 ultimately, the Secretary of Commerce. The policy  
2 advisors represent and are assigned a portfolio of  
3 bureaus. In the Department of Commerce, we have  
4 13 bureaus. But assignments can change over time.

5 But as representing those bureaus, you  
6 would engage -- review documents for policy  
7 content. And documents can be anything from, you  
8 know, research reports to press releases to  
9 actually -- you know, actually, serious policy  
10 memos. You would represent the department or  
11 sometimes the bureaus in interagency policy  
12 discussions, both internally and externally. You  
13 represent the Secretary.

14 My -- my portfolios varied a little bit  
15 over time, but one constant piece has been our  
16 statistical agencies, so the Census Bureau and the  
17 Bureau of Economic Analysis.

18 Q In that role, have you been involved in  
19 content reviews for Census Bureau surveys?

20 A I mean, involved, yeah, for example --  
21 yeah. Yeah. More on the tail end, but yeah.

22 Q Can you describe those instances?

1           A       So -- I mean, it varies, but, I mean,  
2       there's been -- I'm trying to think with ACS. I  
3       mean, I've attended meetings that dealt, for  
4       example, with the race and ethnicity questions and  
5       the -- that review that was contacted over several  
6       years. In the Obama administration, I attended  
7       some meetings that dealt with potential inclusion  
8       of questions that covered the LGBTQ community.  
9       Some on health insurance coverage.

10                I mean, I can't recall everything, but  
11       it's -- you know, the thing about the policy job  
12       is that it's -- it's quite variable, and the  
13       engagement can be deep or light depending on the  
14       needs of the Secretary. So I can't recall  
15       everything, but, yeah, it's a natural part of the  
16       job.

17           Q       Do I recall attending meetings concerning  
18       the addition of a citizenship question to the  
19       decennial census?

20           A       So the content of the 2020 census came up  
21       in -- I mean, like, organically in this  
22       administration. And we -- it's something -- the

1 content, in general, would come up as a natural  
2 part of larger meetings regarding Census Bureau  
3 operations and planning. And that's where I've  
4 been in meetings that related to that.

5 In other words, the Secretary would hold  
6 regular meetings with Census Bureau staff to  
7 review all sorts of issues: Budget, operations,  
8 you know, IT, cyber security. And content -- I  
9 mean, I believe it came up sometimes certainly,  
10 so -- yeah.

11 Q Any other -- let's -- strike that.

12 Any other Census Bureau survey content  
13 issues that you recall being involved in as part  
14 of your role in the Office of Policy and Strategic  
15 Planning?

16 A I mean, I've been -- dealt with -- I've  
17 worked with the Census Bureau on a variety of  
18 issues related to their business and their  
19 household surveys. And questions that would come  
20 up would, I mean, naturally be, you know, what  
21 questions are asked, you know -- you know, a  
22 broad -- a recurring issue with all surveys in the



1 United States is just response rates, and  
2 something that relates to response rates is the  
3 length of the surveys and the burden.

4 And so a natural part of conversations  
5 along those lines are, well, what questions do you  
6 ask, how you ask them? And so that -- those types  
7 of policy discussions have come up, I mean, in all  
8 sorts of contexts in a variety of the household  
9 and business surveys for the Census Bureau and the  
10 Bureau of Economic Analysis.

11 Q As a general proposition, the longer the  
12 survey, the greater the burden on the respondent,  
13 correct?

14 A Yes.

15 Q And the greater the burden, the lower the  
16 response rate, correct?

17 A Generally, yeah. That's a general...

18 Q Any involvement in evaluating the  
19 citizenship question on the ACS survey as part of  
20 this role that you had?

21 A No. It never -- it never came up  
22 specifically. Like, I do not recall any times

1 where we examined the specific need for the  
2 citizenship question. Or at least I was not part  
3 of those conversations. I mean, I was part of the  
4 content review, obviously, but nothing that  
5 specifically I was involved with.

6 Q Even beyond just examining the specific  
7 need for the citizenship question, do you recall  
8 any other conversations, discussions about the  
9 citizenship question on the ACS survey?

10 A On the ACS?

11 Q Let's say, prior to 2017.

12 A I don't recall any. I mean, I could have  
13 had them. I certainly don't recall any.

14 Q Okay. What's your understanding of the  
15 history and status of the consideration of the  
16 merged race/ethnicity question?

17 A Can you --

18 MS. WELLS: Object to the form.

19 BY MR. DURAISWAMY:

20 Q I'm sorry. Let me -- that's an objection  
21 well taken.

22 You mentioned, I think, that you were

1 involved in discussions about the race/ethnicity

2 question on the decennial census; is that right?

3 A Uh-huh.

4 Q Did that relate to a possible merge to

5 the race/ethnicity question?

6 A Yes.

7 Q And what discussions were you involved

8 in?

9 A I mean, there was an OMB -- if I recall  
10 the process correctly, there was an OMB working  
11 group that dated back quite a few years that was  
12 involved with research on potential changes to the  
13 way that federal surveys asks about race and  
14 ethnicity, going from -- basically from two  
15 questions to one, and whether or not the quality  
16 of the responses was better in one approach or the  
17 other.

18 And there's other nuances as well. But,  
19 I mean, that's the broad difference.

20 Q And what's your recollection of what was  
21 done within the department generally to evaluate  
22 whether to move from two questions to one

1 question?

2 A I mean, the typical approach that the  
3 Census Bureau uses is to conduct research, so  
4 to -- you know, either focus groups or surveys. I  
5 can't speak -- remember specifically this one,  
6 but, you know, focus groups or surveys to field  
7 and test different questions and see what the  
8 results are and understand why there might be  
9 differences in the types of responses that people  
10 give.

11 Q Do you recall the period of time over  
12 which this research was done?

13 A For race and ethnicity? I mean, it was  
14 much of the last decade. I don't recall -- I  
15 mean, it came out -- it followed the 2010 census,  
16 but I don't recall what year it started.

17 Q Is it still ongoing, to your knowledge?

18 A I don't know. Not to my knowledge, but I  
19 don't know.

20 Q Do you have an understanding as to what  
21 decisions were made about whether to consider  
22 including a single race/ethnicity question on the

1           A       I'm not a political appointee. I've  
2       worked for political appointees in the Bush  
3       administration, the Obama administration, and now  
4       the Trump administration.

5           Q       And you've never been a political  
6       appointee, correct?

7           A       No. No.

8           Q       How many people are there in the Office  
9       of Policy and Strategic Planning?

10          A       Currently?

11          Q       Sure. Currently.

12          A       There are a policy director, special  
13       assistant and five advisors. There's a vacancy  
14       right now, but it will be filled soon.

15          Q       You're one of the advisors?

16          A       Correct.

17          Q       Who is the policy director?

18          A       Earl Comstock.

19          Q       Who is the special assistant?

20          A       Annie Teague. T-E-A-G-U-E.

21          Q       You report to Mr. Comstock?

22          A       Yes.

1 Q Has that been the case since he took that  
2 position at the outset of the Trump  
3 administration?

4 A So I reported to whoever was the policy  
5 director, and Earl is the current policy director.

6 Q And he has been since the start of the  
7 Trump administration, as far as you recall?

8 A He was one of the first political  
9 appointees to arrive. I can't recall -- I don't  
10 know which date, but yeah.

11 Q Who did you report to before him?

12 A The last policy director under Secretary  
13 Pritzker was John Ratliff.

14 Q Has the size of the office in terms of  
15 personnel changed since 2011?

16 A It's smaller.

17 Q Could you just describe the -- how the  
18 numbers have changed over time?

19 A Yeah. We're about, I'd say, less than  
20 half as large as we were previously.

21 Q Previously, about -- maybe about 15 --

22 A So we maybe had 15 people under Secretary

1 Secretary Pritzker, but there were -- we've  
2 suggested ways in which the Office of the  
3 Secretary, Penny herself, could engage with  
4 businesses to encourage them to respond to the  
5 surveys, because there were issues with response  
6 rates.

7 And so that -- you know, that was -- we  
8 had a lot of conversations with the Census Bureau  
9 about how she could support them. That was sort  
10 of the way she operated.

11 Q Also fair to say that sometimes policy  
12 ideas come either from policy director or from the  
13 Secretary or others within the Office of the  
14 Secretary?

15 A Yeah. They can come from many locations.  
16 We take all good ideas.

17 Q And once the Secretary makes a policy  
18 decision, part of your job is to implement that  
19 decision or execute on it, correct?

20 A And communicate it.

21 Q Communicate it. And advocate for it; is  
22 that right?

1           A     Yeah. I mean, to -- yeah, to -- I would  
2     call it communication, really, yeah.

3           Q     Both with external stakeholders and with  
4     others within the government, correct?

5           A     Yes.

6           Q     In your position, how often do you  
7     interact directly with the Secretary?

8           A     With Secretary Ross?

9           Q     Yes.

10          A     Infrequently.

11          Q     In the last two years, how many meetings  
12     have you been in with him?

13          A     With him one-on-one? Well, I mean, it  
14     varies. I've had very, very, very few, like,  
15     one-on-one conversations with him. I have  
16     attended a handful of meetings in his office. And  
17     where I've seen him most frequently are as part of  
18     the regular oversight meetings he conducts for --  
19     regarding the 2020 census. Those are large group  
20     meetings.

21          Q     How many in the group?

22          A     It can be anywhere from 20 or more. I



1 census. Can you recall any meetings other than  
2 the monthly oversight meetings that you referenced  
3 in which the Census Bureau surveys generally have  
4 been discussed, including perhaps the ACS?

5 MS. WELLS: Object to the form.

6 THE WITNESS: No, not that I can recall.

7 BY MR. DURAISWAMY:

8 Q Has your role changed substantively since  
9 the transition from one administration to the  
10 next?

11 A It changes depending on who the policy  
12 director is and who the Secretary is. It's not  
13 really -- it's not an administration question.  
14 It's who the boss is and their needs can vary  
15 pretty dramatically.

16 Q Understood. How did your role change  
17 when Secretary Ross came into office and when  
18 Mr. Comstock, you know, came into his position?

19 A So I -- we're a smaller office, so my  
20 policy portfolio is broader. So I now cover  
21 also -- like, I cover the Economic Development  
22 Administration and the U.S. Patent and Trademark

1 Office, in addition to the two statistical  
2 agencies.

3 Q And before that, you covered only the two  
4 statistical agencies?

5 A I covered some -- it was more nebulous  
6 under Penny. But, I mean, I covered some EDA  
7 issues. And I interact with other agencies as  
8 well. But, you know, there's -- as far as, like,  
9 clearances go and sort of the regular sort of  
10 paper movement -- that part of our job, it was  
11 basically those two, and some Economic Development  
12 Administration.

13 MR. DURAISWAMY: Why don't we take, like,  
14 a five-minute break.

15 THE VIDEOGRAPHER: Going off the record.  
16 The time is 10:04.

17 (Whereupon, a short recess was taken.)

18 THE VIDEOGRAPHER: Going back on the  
19 record. The time is 10:15.

20 BY MR. DURAISWAMY:

21 Q Mr. Langdon, do you recall that  
22 Mr. Comstock started at the Commerce Department

1 Q Did you have an understanding as to what  
2 his transition team responsibilities were relative  
3 to others --

4 A No.

5 Q -- that you were meeting with?

6 A Not really.

7 Q Did the question of the content of the  
8 decennial census come up at any transition team  
9 meetings?

10 A No, not that I recall. That's a very  
11 weighty subject for a transition team meeting.

12 Q How long were these meetings, typically?

13 A Half an hour, an hour. Honestly, that  
14 period is kind of a blur to me, really. You know,  
15 there was a lot of new faces, a lot -- you know,  
16 just a lot of upheaval when you're, you know,  
17 having many people exit and many people enter.

18 (Deposition Exhibit Number 1 was marked  
19 for identification.)

20 BY MR. DURAISWAMY:

21 Q I'll hand you what we've marked as  
22 Exhibit 1. So this is an e-mail from you to Ellen

1     Herbst dated February 2nd, 2017 with the subject  
2     line "Census Bureau briefing for OS politicals,"  
3     correct?

4             A     I'm sorry, I didn't catch that.

5             Q     Is that what this is?     Just for the  
6     record --

7             A     Yeah.

8             Q     -- confirming this is an e-mail from you  
9     to Ellen Herbst dated February 2nd, 2017, correct?

10            A     That's what I'm reading, yeah.

11            Q     And the subject of the e-mail is, "Census  
12     Bureau briefing for OS politicals," correct?

13            A     Yeah.

14            Q     Did you review this e-mail in preparing  
15     for your deposition?

16            A     No.

17            Q     OS is a reference to Office of the  
18     Secretary, correct?

19            A     Correct.

20            Q     And what are OS politicals?

21            A     Political appointees working in the  
22     Office of the Secretary.

1 be brought up on a temporary detail while there's  
2 no political staff in certain positions. So he  
3 was the acting head of that office.

4 Q And that's another office within the  
5 Office of the Secretary?

6 A Correct.

7 Q Do you have -- well, strike that.

8 During this period of time, did you have  
9 regular communications with him?

10 A With Jim?

11 Q Yeah.

12 A Sure. Yeah.

13 Q About what?

14 A The transition, basically. Transition  
15 issues.

16 Q When you say -- you say in this sentence,  
17 "I ask because Jim S. reminded me about the  
18 upcoming congressional notification of decennial  
19 and ACS topics and the need to gauge Earl's  
20 interest in it."

21 Do you see that?

22 A Uh-huh.

1 Q When you say he reminded you about the  
2 upcoming congressional notification of decennial  
3 and ACS topics, what is that referring to?

4 A So by calendar -- and I may not get all  
5 the details right on this -- but, basically, by --  
6 by law and by calendar, the Census Bureau has to  
7 notify Congress first of the subjects on the  
8 ACS -- on the decennial census, and the ACS would  
9 have been by the end of March of 2017. And then  
10 the year after that, it would actually notify  
11 Congress of the questions on those surveys. So, I  
12 mean, that was -- you know, March 2017 was  
13 right -- you know, shortly after this.

14 Q And this is your -- personally, your  
15 first experience with this process, correct?

16 A No, it's not my first transition. I was  
17 at the Labor Department at the transition from --  
18 working with politicals from the transition from  
19 the Bush administration to the Obama  
20 administration.

21 Q I apologize. I was unclear. When I said  
22 "this process," I mean the congressional

1 notification of decennial and ACS topics.

2 A Correct.

3 Q How did this come up in conversation with  
4 Jim?

5 A I would have to be guided by what the  
6 e-mail says here. I don't recall the  
7 conversation. But it indicates that he initiated  
8 the conversation or reminded me about it.

9 Q Do you have any recollection of whether  
10 it was just part of a general conversation about  
11 transition-related issues or whether he  
12 specifically reached out about this issue?

13 A I have no idea. I do not recall.

14 Q You said that Jim reminded you about the  
15 need to gauge Earl's interest in it. Why was  
16 there a need to gauge Earl's interest in it?

17 A So if I understand the e-mail correctly,  
18 you know, there's -- we're referring to a briefing  
19 that is going to cover a large bureau, actually,  
20 one of our largest, and that could cover a lot of  
21 different topic. And so it's important to make  
22 sure that that briefing is not overwhelming as a

1 first briefing, but it touches on topics of policy  
2 content that are going to be immediately relevant.  
3 And that was, you know, a congressional  
4 notification about our most -- our flagship survey  
5 and the decennial census -- rises to that level.

6 Q And so, according to the e-mail, you then  
7 did reach out to Mr. Comstock to gauge his  
8 interest in hearing about that issue at the  
9 briefing. Is that fair to say?

10 A Yeah. I mean, based on what I'm reading  
11 here, yeah.

12 Q But I'm just trying to -- if I understand  
13 what you're -- the answer you just gave, you were  
14 reaching out to gauge his interest in including  
15 that in the briefing that he was going to receive;  
16 is that right?

17 A Yep. Exactly.

18 Q Then you asked -- and you say, "Earl is  
19 very interested and thinks the Secretary will be  
20 as well," correct?

21 A Uh-huh. Yep.

22 Q Was the conversation in which you asked



1 him about this, was that by phone? By e-mail? In  
2 person?

3 A I can only guess. I don't -- yeah, I  
4 don't recall.

5 Q Well, based on your typical practice and  
6 how you interact with him, what's your --

7 A Earl is hard to track down --

8 Q -- belief?

9 A -- is hard to track down, so probably  
10 would have been me popping into his office at some  
11 point and being lucky to find him and asking him  
12 quickly.

13 Q And what was the substance of the  
14 discussion?

15 A I don't recall. I mean, obviously,  
16 what's reflected here. I don't know if we had  
17 talked about other things.

18 Q What was your understanding of why he was  
19 very interested in this issue?

20 A So Secretary Ross -- this is across the  
21 board -- is -- is very interested in all aspects  
22 of, you know, policy decisions across the

1 department. And this was actually one of the  
2 first indications we got that, you know, that --  
3 you know, a lot of decisions that -- you know,  
4 would begin rising to his level that maybe under  
5 other Secretaries might not.

6 Q My question was a little bit different, I  
7 this.

8 A Okay.

9 Q What was your understanding as to why  
10 Earl was very interested?

11 A Actually, what I just said. That's a  
12 process question. I think it's a process response  
13 as much as maybe a content response.

14 Q He was very interested -- your  
15 understanding is he was very interested because  
16 Secretary Ross was very interested; is that right?

17 A Yeah. But like I say, I think it's  
18 probably -- keep in mind that, you know, if we're,  
19 as a department, notifying Congress about  
20 something that's a major policy decision, across  
21 the board, he wanted to know. And so this was a  
22 major one. This was one that touched on me and --

1 you know, so in that vein, that -- that's  
2 consistent with how things have operated under  
3 Secretary Ross.

4 Q When you say he wanted to know, you're  
5 referring to Secretary Ross?

6 A Yeah.

7 Q Okay. So just so I understand, your  
8 understanding as to why Earl was very interested  
9 in this is because Secretary Ross was very  
10 interested in it?

11 A I -- I don't know. I mean, he -- Earl,  
12 you know, represents the Secretary's views. He --  
13 you know, obviously, he interacts with him  
14 regularly. And so he can -- somehow, you know,  
15 felt that the Secretary, you know -- I'm not sure  
16 based on what, but felt that the Secretary would,  
17 you know, want to be briefed on this.

18 Q Did you say why he thought the Secretary  
19 would be interested?

20 A I don't recall.

21 Q Did he indicate whether he had discussed  
22 the issue with the Secretary?

1 A I don't recall.

2 Q Did you have an understanding at that  
3 point, February 2nd, 2017, why Secretary Ross was  
4 interested in this?

5 A I don't recall.

6 Q You underscored the word "very," correct?

7 A I did. Yeah.

8 Q Indication to you that Mr. Comstock  
9 expressed an especially high degree of interest in  
10 this topic?

11 A That's what the underlining would  
12 suggest.

13 Q More than you expected?

14 A I can't say what I expected or didn't  
15 expect. I came away with the impression that, you  
16 know, he -- at least based on my reading of this  
17 e-mail, that he felt that this was a topic that  
18 needed to be on the briefing.

19 Q And you have absolutely no recollection  
20 of that conversation?

21 A Of this conversation? Out of all the,  
22 you know, conversations I've had with Earl? No.

1           A       I don't understand the -- certainly?

2       I -- I don't know.

3           Q       Okay. Well, let's try to refresh your  
4       recollection since --

5           A       Okay.

6           Q       -- it's -- apparently some of these  
7       things are challenging for you to recall.

8                   (Deposition Exhibit Number 2 was marked  
9       for identification.)

10       BY MR. DURAISWAMY:

11           Q       I'm handing you what we've marked as  
12       Exhibit 2.

13           A       Okay.

14           Q       So this is an e-mail from you to  
15       Mr. Comstock dated March 10, 2017, correct?

16           A       Correct.

17           Q       And it was sent at 7:50 p.m., right?

18           A       Yep.

19           Q       Do you recall this e-mail?

20           A       This specific e-mail? I don't recall it,  
21       but it looks -- looks like an e-mail I would have  
22       written.

1 Q Do you recall e-mails about this topic?

2 A About this briefing?

3 Q Yes.

4 A Not specifically. I mean, like I say, it  
5 was -- we were in a period of transition where we  
6 would normally schedule briefings for Earl or for  
7 others on specific topics that they cared about.  
8 So this is consistent with the way things operate,  
9 yeah.

10 Q For the record, in this e-mail, you ask  
11 Mr. Comstock, "What does your schedule look like  
12 to receive a one-hour (max) briefing on 2020  
13 census and ACS topics later next week?"

14 Correct?

15 A Correct.

16 Q And you say, "The goal is help you  
17 understand the congressional notification process  
18 as well as the actual topics themselves," correct?

19 A Correct.

20 Q Do you know if this is the follow-up  
21 briefing that you were referring to in your  
22 February 2nd e-mail?

1           A       I don't know if it's that specific  
2       briefing, but it's -- that's -- it's consistent  
3       with what the goal would have been.   The goal  
4       would have been to help them understand the  
5       subject, so how we notified Congress and the --  
6       you know, the actual -- what we ask in these  
7       surveys.   You know, they didn't -- yeah.

8           Q       And if you -- let me hand you what we've  
9       marked as Exhibit 3.

10                   (Deposition Exhibit Number 3 was marked  
11       for identification.)

12       BY MR. DURAISWAMY:

13           Q       This is an e-mail from you to  
14       Mr. Comstock and Ellen Herbst, copying Dennis  
15       Alvord, dated March 15th, 2017.   Do you see that?

16           A       Yes.

17           Q       And in this e-mail you say, "Earl and  
18       Ellen:   I would like to schedule a Census Bureau  
19       briefing on the 2020 census and ACS topics before  
20       the Census Bureau does its Hill notifications on  
21       March 31," correct?

22           A       Yep.

1 Q And you say, "The goal is for all to be  
2 on the same page about the notification process  
3 for the topics this year and questions next year."

4 A Uh-huh.

5 Q Correct?

6 A Yep.

7 Q So this is five days after the last  
8 e-mail. You're still trying to schedule this  
9 briefing, correct?

10 A That's par for course, yeah.

11 Q Okay. And you're trying to schedule this  
12 particular briefing because Mr. Comstock had  
13 indicated to you that this was a topic of  
14 particular interest to him and the Secretary,  
15 correct?

16 MS. WELLS: Object to the form.

17 THE WITNESS: So -- yeah. I mean, so  
18 this is -- like I say, this is par for course with  
19 Earl and with the Secretary. They -- you know,  
20 when we're notifying, in this case, the Hill on a  
21 major policy decision, they want to know how it  
22 works and what the content is.



1 BY MR. DURAISWAMY:

2 Q Why did you understand it to be a major  
3 policy decision?

4 A Well, I mean, you know, it's the nature  
5 of the surveys. It's the 2020 census. It's, you  
6 know, one of our, you know, congressionally -- or  
7 constitutionally mandated operation that we do.  
8 And on the ACS which is our -- you know, the  
9 largest survey that the Census Bureau conducts.

10 And there's -- you know, there's a lot of  
11 sensitivity around topics, particularly at that  
12 point. The background I'm coming into this with  
13 is probably largely on the ACS as well. There was  
14 a lot of sensitivity about the topics actually on  
15 that, so...

16 Q When you say there was a lot of  
17 sensitivity about the topics, what are you  
18 referring to?

19 A Kind of what I mentioned earlier. I  
20 mean, there's a history that that survey in  
21 particular has had with the Hill that's perceived  
22 as burdensome. That includes topics that don't

1 really need -- that some members of the Congress  
2 or the public feel shouldn't be on there.

3 And so, you know, notifying Congress  
4 that, you know, these -- that we're going to ask  
5 about any number of things could, you know,  
6 trigger concerns. Yeah. It's been a sensitive --  
7 the ACS part has been sensitive for years and  
8 so...

9 Q Was there any change to the content of  
10 the ACS that was being contemplated at the time  
11 that would make you think it was a major issue?

12 A I'm trying to think. So, I mean, there  
13 had been -- let's see. I mean, there was  
14 sensitivity about health -- health insurance and  
15 then the -- sexual orientation. I mean, some --  
16 you know, some -- there had been discussions about  
17 that as well, so...

18 Q I assume that all these efforts to  
19 schedule this briefing on the notification process  
20 regarding decennial and ACS topics was in response  
21 to some conversations you had with Mr. Comstock  
22 about his interest in these issues, correct?

1           A       Yeah. That would be natural, yeah.

2           Q       Okay. And what do you recall about those  
3       conversations by roughly mid-March of 2017?

4           A       Like I say, I don't recall specific  
5       conversations, but this is consistent with how --  
6       you know, Earl would indicate interest in a topic,  
7       and we would work with his tricky schedule to make  
8       sure that he would get briefed on it.

9           Q       I'm not asking you to recall specific  
10       conversations. I'm asking you, what do you recall  
11       about conversations generally with Mr. Comstock  
12       regarding this issue by March 15, 2017?

13          A       I dont' really -- help me understand the  
14       question.

15          Q       What do you recall talking to  
16       Mr. Comstock about with respect to notifying the  
17       Hill about census and ACS topics?

18          A       What this indicates, that it would be --  
19       that he wanted to understand the process and what  
20       we were -- what was going to Hill and how -- you  
21       know, basically.

22          Q       I understand that's what this indicates.

1 Q Roughly later?

2 A And to be clear, I mean, I think I would  
3 distinguish between interest in the topics and an  
4 interest in -- or the need for adding topics or  
5 changing them.

6 You know, a lot of the conversations at  
7 this point, you know -- you have to understand  
8 that people come in, in this job, with -- you  
9 know, unless they have worked with these surveys  
10 before or have some sort of background on the  
11 Census Bureau, they have a lot to learn.

12 And so -- and the 2020 census is complex.  
13 The ACS is complex. And so there's a lot of just  
14 a natural learning process that the principals  
15 have to go through. And this is part of it.

16 MR. DURAI SWAMY: Move to strike as  
17 nonresponsive.

18 BY MR. DURAI SWAMY:

19 Q Do you recall that at some point --  
20 strike that.

21 At some point, you came to understand  
22 that Secretary Ross was interested in adding a

1 question to the decennial that inquired about  
2 citizenship or immigration status, correct?

3 A Correct.

4 Q When was that, approximately?

5 A It would have been in the summer of that  
6 year. I can't say if it was early or late summer,  
7 but it was --

8 Q How did you come to that understanding?

9 A I think it would have been in -- most  
10 likely, it would have been in, like, one of these,  
11 like, regular meetings that he was holding  
12 regarding, you know -- the large group meetings  
13 that we had.

14 Q And what do you recall he communicated at  
15 that meeting?

16 A Specifically? I -- I don't remember.

17 Q But you recall that he communicated that  
18 he was interested in adding a question about  
19 citizenship status to the decennial; is that  
20 right?

21 A Yeah, I'm trying to think about how to  
22 characterize that. Yeah, I mean, that's probably

1 about right. Yeah. I mean, there was -- he was  
2 interested in -- in the topics, yeah. I mean,  
3 yeah, so...

4 Q And do you recall -- strike that.  
5 What do you recall about why he was  
6 interested in adding a citizenship question to the  
7 decennial?

8 A I don't think the why ever came up.

9 Q Is your recollection that he simply  
10 communicated to everyone that he was interested in  
11 adding a question about citizenship but didn't say  
12 why?

13 A Uh-huh. I mean, that's -- yeah.

14 Q And is it your recollection that nobody  
15 asked why?

16 A I do not recall anybody asking why.

17 Q And you don't recall any conversations  
18 with anyone at the Commerce Department about why  
19 Secretary Ross might be interested in adding a  
20 citizenship question?

21 A Well, you know, it would come up  
22 subsequently. And -- yeah. Obviously, it would

1 come up. But -- I mean, yeah.

2 Q When you say subsequently, roughly when  
3 are we talking about?

4 A Again, I mean, from summer onward.  
5 Right? I mean, yeah.

6 Q And as it came up, what was your  
7 understanding as to why he was interested?

8 A That there was -- you know, so we already  
9 collect data on citizenship through the ACS. And  
10 so the question about why it would be added to the  
11 2020 census is, you know, that there was a need  
12 for more geographically granular data than the ACS  
13 could provide. So, my recollection, it would be  
14 along those lines, you know, that there was a data  
15 need for it.

16 Q Is it your recollection that that need --  
17 the articulation of that need originated with  
18 Secretary Ross himself?

19 A Yeah. I mean, we didn't question, you  
20 know -- I mean, I guess Secretary Ross versus,  
21 like, what?

22 Q Well, let me ask you. Who came up with

1 the idea that there was a need for citizenship  
2 data at a more granular geographic level?

3 MS. WELLS: Object to form.

4 THE WITNESS: I -- so I can't recall. I  
5 mean, if the Secretary asked us to look into it,  
6 we look into it. Now, then -- I mean, the  
7 actual -- the need for it? The way the 2020  
8 census and the ACS work, particularly the ACS, is  
9 that there is a federal nexus -- right? There's a  
10 federal need for data to be collected.

11 I don't recall when that federal need was  
12 articulated, but it was associated with -- you  
13 know -- like I say, I guess I'm trying to -- I'm  
14 trying to think about how that came up, but -- I'm  
15 not quite sure how it was. But, I mean, at some  
16 point, you know, I learned that there was -- you  
17 know, that the need was tied to a need from the  
18 DOJ for more data.

19 I mean, again, it goes back to the nexus  
20 between 2020 census and ACS. The main customer  
21 for the -- the main federal --

22 THE REPORTER: You need to slow down,



1 please.

2 The main...

3 THE WITNESS: The main federal customer

4 for the ACS is the Department of Justice. And so

5 the question was whether DOJ -- you know, so given

6 that as a baseline, the question is, you know,

7 does DOJ need more -- like, more specific data?

8 But how -- you know, how that came up, I don't

9 know.

10 BY MR. DURAISWAMY:

11 Q Just to be clear, when you say the  
12 Secretary asked us to look into it, we look into  
13 it, the actual -- the need for it, et cetera,  
14 what's the "it" that you're referring to in your  
15 answer?

16 A Which -- where are you referring to?

17 Q I'm sorry. I'm reading your answer,  
18 which I'm getting --

19 A Oh.

20 Q -- a real time transcript. The answer  
21 you just gave, you used the word "it" several  
22 times. For example, you said, the Secretary asked

1 us to look into it, we look into it, the need for  
2 it, and so forth.

3 What's the "it" that you're referring to?

4 A So I think part of it was that there was  
5 a need to understand, like, the historical context  
6 for asking about citizenship. So it could well be  
7 that, you know, when -- you know, does -- where  
8 does the Census Bureau ask about citizenship?  
9 When has it asked about citizenship? You know,  
10 why did it ask about citizenship?

11 Q And you did look into those things,  
12 correct?

13 A Uh-huh. Yeah.

14 Q You were specifically asked to, correct?

15 A I -- yeah. At least at one point early  
16 on. I mean, I think Ellen and -- yeah, briefly.

17 Q And you understood that that request was  
18 related to the Secretary's interest in that issue,  
19 correct?

20 A I don't recall the context. You know,  
21 like I say, if somebody like Earl or Ellen asks  
22 for something, I don't need to ask, like, well,

1 why do you need it? I mean, they ask for it and,  
2 you know, I do it.

3 Q And they were interested in -- or they  
4 asked you to research the history of whether  
5 undocumented immigrants were included in the  
6 apportionment count, correct?

7 MS. WELLS: Object to form.

8 THE WITNESS: I'd have to go back and  
9 look into it. But, I mean, there's one thing  
10 that -- I mean, comes up sometimes, and probably  
11 came up, was, you know, who is in scope of the  
12 decennial census? Who -- who responds to the  
13 survey? Who's counted? Yeah.

14 BY MR. DURAISWAMY:

15 Q And that was something that you didn't  
16 raise. It was something that the politicals in  
17 the Office of Secretary raised, correct?

18 A Ellen is not a political.

19 Q Well, was it --

20 A Leadership. Leadership.

21 Q Are you telling me that it was Ellen who  
22 raised it or that it was Earl or someone else?

1 oh, I didn't know this was -- so, yeah.

2 Q Right. And you understand that there was  
3 a deadline of March 31st, 2017 to identify the  
4 topics that were to be included on the decennial  
5 census, correct?

6 A Yeah.

7 Q And that, after that date, you would have  
8 less leeway to modify the topics to be included on  
9 the census, correct?

10 A Less leeway.

11 Q And that's why it was important to get on  
12 the same page about it, right?

13 A Uh-huh. Yeah. It's a public statement.  
14 And -- I mean, so when I say -- it's a  
15 congressional notification, but it's also --  
16 there's a public aspect to it. So the Census  
17 Bureau is saying to the world and to Congress --  
18 you know, and principally to Congress, but to the  
19 world, here's what we're asking on these two  
20 instruments.

21 Q And you understood, from your  
22 conversations with Mr. Comstock about his interest

1 in this issue, that he did want to consider  
2 changing the topics to be included on the census,  
3 correct?

4 MS. WELLS: Object to the form. And  
5 mischaracterizes testimony. I think that question  
6 has been asked.

7 MR. DURAI SWAMY: I just asked it. It is  
8 a question. And, please, no speaking objections.

9 BY MR. DURAI SWAMY:

10 Q Go ahead.

11 A So, yeah, I -- the -- my desire to make  
12 sure Earl and I and everybody were on the same  
13 page wasn't with respect to him necessarily coming  
14 in and -- and saying there needed to be a change.  
15 And I don't recall him asking for a change at that  
16 point. I think it was just to make sure that he  
17 understood -- you know, that, like I say, there  
18 were no surprises.

19 Q Yeah, but you understood that he was  
20 considering a change, correct?

21 MS. WELLS: Object to the form.

22 THE WITNESS: As of this date?

1 BY MR. DURAISWAMY:

2 Q Yes.

3 A No. Not really, no.

4 Q When did you first come to understand  
5 that he was considering a change to the topics on  
6 the decennial census?

7 A I believe I've said, and I stand by my  
8 answer, that it was summer of 2017.

9 Q Okay. At this time, your testimony is  
10 all you understood is that he was interested in  
11 knowing more about the process, correct?

12 A That's my understanding of it, yeah.

13 Q But you have no recollection as to why he  
14 was concerned about -- why he was interested in  
15 knowing more about the process; is that right?

16 A I can't recall that, yeah.

17 Q All right. During these discussions  
18 about the process for notifying Congress,  
19 presumably, you pointed out to Mr. Comstock that  
20 there was this March deadline -- strike that --  
21 this March -- let me start over.

22 During these discussions with

1 Mr. Comstock, I assume that you informed him that  
2 there was a March 2017 deadline for identifying  
3 the topics to be included on the 2020 census,  
4 correct?

5 A For notifying Congress of these topics.  
6 Like I say, you asked -- you raised a question  
7 about leeway. I'm not -- even today, I'm not sure  
8 what the specific leeway is for changing these  
9 topics afterwards, or what the process would be  
10 for saying to Congress, actually, we're going to  
11 roll out -- we're going to do something different.

12 Q Okay. Did you also explain to him that  
13 there was a March 2018 deadline for notifying  
14 Congress of the questions to be included on the  
15 decennial?

16 A It was in the earlier e-mail you showed  
17 me. At least I thought so. I thought so. No,  
18 maybe not. No. Okay. It's not.

19 Q But presumably, you did, correct?

20 A Yeah, I would have, yeah. It's a  
21 two-stage -- sorry, my misrecollection. But it's  
22 a two-stage process. First topics -- no, it's

1 actually in this e-mail right here, yeah. The  
2 goal is for -- the March 15th e-mail from  
3 8:30 p.m.

4 Q Right. I see. You're referring to the  
5 process for the topics this year and questions --

6 A And questions next year. Okay. Yeah.

7 Q Did you have any discussion about the  
8 significance of the two different deadlines?

9 A I didn't hear you, I'm sorry.

10 Q Did you have any discussions with  
11 Mr. Comstock or any of the other individuals in  
12 the Office of the Secretary about the significance  
13 of those two deadlines?

14 A Probably. I can't remember specific  
15 conversations, but I'm sure I did. Yeah. When  
16 you say significant, it's, like -- I would say the  
17 difference, like, what -- you know, what's the  
18 difference between talking about topics and what  
19 delivering the questions actually means.

20 Q Did you have any discussion about what  
21 leeway you would have to change the questions on  
22 the decennial census after submitting the



1 year there was discussion about adding a  
2 citizenship question to the census, correct?

3 A Uh-huh. Uh-huh.

4 Q Was there any discussion about whether  
5 the citizenship question fell within one of the  
6 topics that was identified in the submission to  
7 Congress in March 2017?

8 A I guess I don't understand the question  
9 in the sense it's sort of black and white. Right?  
10 I mean, you can look on paper and say, here's what  
11 Congress got. Right? I mean, there's no -- I  
12 mean, there's not much to discuss there, is there,  
13 really? I don't recall. I mean, is the question,  
14 you know, did we say we would include citizenship  
15 on the 2020 census, for example?

16 Q No. Well, what's your understanding of  
17 the difference between the notification deadline  
18 for topics and questions? What's the difference  
19 between topics and questions?

20 A Okay. So topic is just a list of, like,  
21 data fields. We're going to ask about age. The  
22 question would be, how do you ask about age? You

1 know, is it multiple choice? How do you phrase  
2 the question? These are actual questions on the  
3 survey form that people would be getting.

4 Q And agree that citizenship or immigration  
5 status was not one of the topics that was  
6 identified in the March 2017 submission to  
7 Congress?

8 A Immigration status has never come up.  
9 The Census Bureau doesn't ask about that in any of  
10 its surveys and it's never come up, as far as I  
11 know, in any conversations. So we can set that  
12 aside.

13 Citizenship -- yeah, like I say, I  
14 don't -- the actual notification -- I guess, if  
15 the question is, you know, did Earl ask about how  
16 we would let Congress know or if we decided to  
17 change things, I don't recall that. That's not  
18 typically, like, an area where I would work.  
19 Yeah.

20 Q That's -- so that's not the question.

21 A Okay.

22 Q My question now is, you agree that in the

1 March 2017 submission of decennial census topics  
2 to Congress, citizenship was not included,  
3 correct?

4 A It was included only for the ACS.

5 Q And it was not included for the decennial  
6 census, correct?

7 A I do not recall -- yeah, I don't think  
8 so, no.

9 Q Okay. And so to try to go back to my  
10 previous question, and keeping in mind why you  
11 were struggling with it, agree, then, that when  
12 the citizenship question came up for discussion  
13 later that year, it was clear that it was not  
14 included or among the topics that had been  
15 identified for Congress --

16 A That's demonstrable. I mean, that's --  
17 you can look it up online and -- in the March  
18 submission and then -- I'm pretty certain it  
19 wasn't on there as something on the 2020 census.

20 Q Do you have an understanding of the  
21 circumstances in which the department can add --  
22 include questions in its March 2018 submission to

1 Congress that are not covered by the topics in its  
2 March 2017 submission?

3 A Yeah, I don't know the specific process.  
4 And that's a legal question, and I'm not a  
5 department lawyer.

6 Q And to be clear, you don't recall being  
7 involved in any discussions or conversations about  
8 that?

9 A Like, how are we going to tell Congress?  
10 No.

11 Q No. About the circumstances in which you  
12 can include a question in the March 2018  
13 submission that wasn't in the March 2017 topics.

14 A That's a process question that I don't  
15 recall being a part of.

16 MR. DURAISWAMY: Why don't we take a  
17 five-minute break?

18 THE VIDEOGRAPHER: Going off the record.  
19 The time is 11:08.

20 (Whereupon, a short recess was taken.)

21 THE VIDEOGRAPHER: Going back on the  
22 record. The time is 11:23.

1 Q When were those discussions?

2 A When I was aware of them? I don't know  
3 when the discussions were. I mean, I became aware  
4 of them, like, you know, later in the summer and  
5 the fall. Yeah.

6 Q What discussions with DOJ did you become  
7 aware of?

8 A You know, just around sort of -- I mean,  
9 around the process. Like I said, I never -- I  
10 don't know specifically -- I've never looked into,  
11 like, the analytical need for the data. Right? I  
12 mean, the actual -- you know, how the data was  
13 specifically going to be used.

14 Q Your sentence kind of broke up there, so  
15 I'm not sure which part goes with which.

16 A We can start over.

17 Q Okay. Fair enough. What do you -- what  
18 did you become aware of with respect to  
19 conversations with DOJ about this in the summer  
20 and fall?

21 A That there were conversations with DOJ  
22 about their need for the data.

1 Q And did you have an understanding of who  
2 was involved in those conversations?

3 A On our side? James Uthmeier was the --  
4 you know --

5 THE REPORTER: Say it again, please.

6 THE WITNESS: James Uthmeier. U-T-H --

7 THE REPORTER: No. On our side...!

8 THE WITNESS: Yeah. On our side, it was  
9 James Uthmeier. U-T-H-M-E-I-E-R.

10 BY MR. DURAISWAMY:

11 Q Who else do you recall was involved in  
12 those discussions?

13 A I don't know. I don't know. I wasn't  
14 part of the discussions, so you're asking me sort  
15 of secondhand who was part of conversations I  
16 wasn't part of.

17 Q Well, just to your knowledge. I mean,  
18 you know that Mr. Uthmeier was involved in those  
19 discussions, right?

20 A Yeah.

21 Q Okay. Do you know if anyone else was  
22 involved in those discussions?

1 about whether undocumented residents are included  
2 in apportionment population counts?

3 A To my knowledge, Earl doesn't share with  
4 me his conversations with the Secretary or his  
5 e-mails with the Secretary.

6 Q That's not my question. My question is,  
7 were you aware of that?

8 A No. That's another way of saying no.

9 Q Okay. Were you aware, at the time, that  
10 Mr. Comstock was already communicating with  
11 Secretary Ross about the absence of a citizenship  
12 topic or question on the 2020 census?

13 A Communicating with the Secretary about  
14 that?

15 Q Yes.

16 A I don't recall him, like -- no, I don't.  
17 No.

18 Q Okay. Let's talk about something that I  
19 know that you were aware of.

20 (Deposition Exhibit Number 6 was marked  
21 for identification.)

22 BY MR. DURAISWAMY:

1 Q Handing you what we've marked as

2 Exhibit 6.

3 A Okay.

4 Q You see this is a series of e-mails

5 between you and Census Bureau staff from May 24th,

6 2017?

7 A Correct.

8 Q And the subject of these e-mails is

9 regarding requested information - legal review all

10 residents. Do you see that?

11 A Yeah.

12 Q Do you want to take a minute to review

13 this e-mail?

14 A Yeah. Uh-huh. Yeah.

15 Q Okay. Look at the second e-mail from the

16 bottom from Burton Reist to you dated May 24,

17 2017. Do you see that?

18 A Yeah.

19 Q Who is Burton Reist?

20 A He is a senior executive in the Census

21 Bureau. I can't exactly remember his, you know,

22 title. He's a go-to person for me in the Census



1 Bureau.

2 Q Is it correct that he is the -- provides  
3 oversight for the Census Bureau's redistricting  
4 data program?

5 A Like I say, I can't remember his exact  
6 role. I mean, I work with a lot of different  
7 people at the Census Bureau who contribute to the  
8 2020 program. So, I mean, if -- I don't recall if  
9 he's a part of that piece or not -- part of that  
10 operation or not.

11 Q He says, "This is the more complete set  
12 of documents that I referenced in my earlier  
13 e-mail," correct?

14 A Uh-huh.

15 Q Do you know what the earlier e-mail is  
16 that he's referring to?

17 A I'd have to see it. I mean, I can't --  
18 you're asking me to recall, like, one of 10,000  
19 e-mails.

20 Q Fair to say that it relates to a subject  
21 matter that's similar to this e-mail?

22 A That would be a reasonable conclusion.

1 Q Okay. The subject line, legal review all  
2 residents, what does that refer to?

3 A I don't know. I didn't write that  
4 subject line. Based on these e-mails, the subject  
5 line originally -- originated from Misty Reed. So  
6 I can't speak to why they phrased it that way.

7 Q Could be that it relates to a legal  
8 review pertaining to whether all residents are  
9 accounted in the census?

10 MS. WELLS: Object to form.

11 THE WITNESS: It could be that, yeah.

12 BY MR. DURAISWAMY:

13 Q Could be that it relates to a legal  
14 review of whether all residents are included in  
15 the apportionment counts?

16 MS. WELLS: Object to form.

17 THE WITNESS: It could be that as well.

18 Like I say, I don't know. It's a -- it's a  
19 subject line in a e-mail which is, by definition,  
20 abbreviated.

21 BY MR. DURAISWAMY:

22 Q Do you know what the documents are that

1 Mr. Reist is referring to in his e-mail?

2 A I can't remember. Based on the next  
3 e-mail up, it looks like it references to some  
4 court cases, but I don't know.

5 Q Right. What's Louisiana v. Bryson?

6 A That specific case? I don't know.

7 Q Could be that it relates to including  
8 undocumented residents in apportionment counts?

9 MS. WELLS: Object to form.

10 THE WITNESS: It could be, yeah.

11 BY MR. DURAISWAMY:

12 Q It could be that the 1989 DOJ letter  
13 relates to the same thing?

14 A Yeah. It's not a subject area I'm, like,  
15 fluent in. But, yeah, it could be.

16 Q Okay. It was a subject matter that you  
17 were asked to research, right?

18 MS. WELLS: Object to form.

19 THE WITNESS: It looks like, I'm -- yeah.  
20 I'm gathering those documents. So...

21 BY MR. DURAISWAMY:

22 Q You recall -- sir, you recall being asked

1 to look into this, don't you?

2 MS. WELLS: Object to the form.

3 THE WITNESS: From Earl?

4 MR. DURAISWAMY: What's wrong with the  
5 form of the question?

6 MS. WELLS: It's, like, argumentative and  
7 leading. And you could have -- you haven't laid  
8 the foundation for what the context might have  
9 been. Just -- to me, I don't think it's a totally  
10 appropriate question.

11 MR. DURAISWAMY: I can ask leading  
12 questions. It's not argumentative. All I've  
13 asked is -- it is a foundational question, if he  
14 recalls being asked to look into this.

15 MS. WELLS: You didn't ask it that way.  
16 But, I mean, that's fine. He can go ahead and  
17 answer.

18 BY MR. DURAISWAMY:

19 Q You recall being asked to look into this,  
20 correct?

21 A Yeah.

22 Q Okay. And what do you recall about that?

1           A       I was asked to look into it. I gathered  
2 information, provided an answer.

3           Q       Okay. And the "it" is this question of  
4 whether certain populations, including certain  
5 immigrant populations, are counted in the census  
6 and included in the counts for apportionment  
7 purposes, right?

8           A       So who's in scope of the 2020 census, who  
9 it measures, and then what data tabulations are  
10 produced with that information.

11          Q       Right. And you were --

12          A       Apportionment counts are one of the set  
13 of data tabulations.

14          Q       Right. And you were asked to look into  
15 it around this time, in May 2017, correct?

16          A       Yeah. Based on these e-mails, yeah.

17          Q       And this related to consideration of  
18 whether to include a citizenship question on the  
19 census, correct?

20          A       I don't believe Earl gave me the context  
21 about why he was asking about it.

22          Q       Do you recall that you had subsequent

1 content of the decennial census at this meeting?

2 MS. WELLS: Object to form.

3 THE WITNESS: Like I say, I don't recall  
4 the specific agenda of that meeting. But it's all  
5 documented.

6 BY MR. DURAISWAMY:

7 Q Documented where?

8 A In the PowerPoints that I, you know,  
9 mentioned earlier. The Census Bureau, when it has  
10 meetings like this, you know, prepares slide  
11 decks. Makes it easier for everybody to follow  
12 what's going on.

13 Q If you go up to the next e-mail, which is  
14 the third one on the first page.

15 A Okay.

16 Q There's an e-mail from Mr. Reist back to  
17 you.

18 A Uh-huh.

19 Q Actually, strike that.

20 Just to be clear, on the e-mail that you  
21 sent at 5:24 p.m., you write, "This is a lot to  
22 digest, but Louisiana v. Bryson seems the most

1 timely, along with the 1989 DOJ letter," correct?

2 A Uh-huh.

3 Q What does "this is a lot to digest" refer  
4 to?

5 A I'm not a lawyer, so, like, to read  
6 through, you know, like, court cases and legalese  
7 is not something I enjoy or am good at.

8 Q And your point being that he had  
9 apparently sent you several documents related to  
10 legal issues, correct?

11 A Either several or just dense ones.

12 Q Okay. And just so I'm clear, sitting  
13 here today, you have no recollection of what  
14 Louisiana v. Bryson is about?

15 A No.

16 Q Or what the 1989 DOJ letter was about?

17 A No.

18 Q Okay. So then Mr. Reist responds at  
19 5:42 p.m. Did you have any follow-up  
20 conversations with either him or Melissa Creech or  
21 James Dinwiddie or Lisa Blumerman about the  
22 contents of the materials that Mr. Reist had sent

1 included him, which would have been Burton.

2 Q Do you have a sense of what his  
3 responsibilities were that related to the subject  
4 matter of these e-mails?

5 A No. I think I just answered that. So  
6 no.

7 Q You don't?

8 A No.

9 Q Okay. You respond at 5:53 p.m. and you  
10 say, "Actually, the Secretary seemed interested on  
11 subjects and puzzled why citizenship is not  
12 included in 2020."

13 What subjects was Secretary Ross  
14 interested in at that meeting on May 24th?

15 A So "subjects" references the -- you know,  
16 the actual topics of the -- that are on the 2020  
17 census, you know, what -- what gets asked, like  
18 the topic areas, you know, like, age -- you know,  
19 as examples of subjects would be like age, race,  
20 ethnicity, number of people in your household.  
21 That's what that refers to.

22 And citizenship is not on the list, or at



1 that point wasn't on the list.

2 Q Why -- why was he puzzled?

3 MS. WELLS: Object to form.

4 THE WITNESS: I can't answer why the  
5 Secretary was puzzled or not. I don't know.

6 BY MR. DURAISWAMY:

7 Q Did he express puzzlement about why  
8 citizenship was not included in the 2020 --

9 A Yeah, he would have.

10 Q -- topics?

11 A Based on this e-mail -- I don't recall  
12 the meeting, but, yeah, based on this e-mail, he  
13 would have inquired -- not understood why  
14 citizenship was not part of it.

15 Q And what was your understanding as to why  
16 he was puzzled about that?

17 A I don't know. I don't know why he was  
18 puzzled about that.

19 Q Was there a discussion about that at the  
20 meeting?

21 A Like I not, I don't recall the specific  
22 aspects of the meeting. But, you know, this --

1 like I say, there's a learning process that --  
2 this is one example of it -- that people go  
3 through when they're dealing with these surveys,  
4 in trying to figure out what we ask, why we ask  
5 it, why things are on there.

6 Q Right. But he didn't -- you didn't write  
7 that he was puzzled about why some other --

8 A Yeah.

9 Q -- topics or questions --

10 A That's true.

11 Q -- were not included.

12 A Yeah.

13 Q You wrote only that he was puzzled about  
14 why citizenship was not included, correct?

15 A That's right. Yep.

16 Q Can you recall any other issues that  
17 Secretary Ross was concerned about or took an  
18 interest in with respect to the content of the  
19 2020 census questionnaire?

20 A No.

21 Q You then say, "It might be good to have  
22 in our back pocket the criteria used to pick

1 Q When did you become more fluent on the  
2 subject matter?

3 A I mean, over time, really. I mean, it  
4 was, like -- it was engaging with -- you know,  
5 with Melissa -- particularly with Melissa, but  
6 also with Lisa on basically trying to gain an  
7 understanding of a lot of the questions. I was  
8 particularly interested for one -- one that's  
9 unrelated to this, but was on the 2020 census I  
10 didn't understand was, for example, the housing  
11 tenure question. There's a question on there, do  
12 you own or rent your house? And it didn't really  
13 enter into my mind why --

14 Q Right. So --

15 A -- that question was on the form.

16 Q Okay. So in the context of pursuing this  
17 idea of adding a citizenship question to the  
18 decennial census, you developed a greater  
19 understanding of why some -- the criteria for  
20 including some topics on the ACS versus the  
21 decennial, correct?

22 A Yeah. And why -- why every question

1 that's on the decennial is actually on there. It  
2 was something at that point that I was not -- I  
3 was generally aware of, but not specifically aware  
4 of.

5 Q Why were you asking for an answer that  
6 evening at 10:51 at night?

7 A Good question. Yeah, good question. I  
8 don't know.

9 Q It suggests there was some urgency to  
10 this, correct?

11 A Oh, yeah. Yeah. Based on the e-mails,  
12 probably just given, like, the fact that the  
13 Secretary himself was asking as opposed to, like,  
14 me just, you know, interested and trying to do  
15 some, you know, research.

16 Q Right. So this is -- you're trying to  
17 respond promptly to questions that he asked at  
18 this meeting on May 24th about why citizenship --  
19 the citizenship question is on the ACS but not the  
20 Census; is that right?

21 A Well, not just -- that is one example. I  
22 mean, it's the broader question of what's on each

1 A Well, what's on here.

2 Q -- trying to understand --

3 A What's on here, I mean, you know...

4 Q Anything else that you recall?

5 A I mean, there wouldn't be anything else.

6 This is how I would respond, would be to go to the  
7 people who are the subject matter experts and ask  
8 for information.

9 Q No. I'm asking if you recall any other  
10 follow-up actions that you took after this meeting  
11 that related to this issue of the citizenship  
12 question not being on the 2020 census?

13 A Not that I recall. This is what I would  
14 do. I mean, this is -- you go to the subject  
15 matter experts and you get information from them.

16 Q Okay.

17 (Deposition Exhibit Number 7 was marked  
18 for identification.)

19 BY MR. DURAISWAMY:

20 Q I'm handing you what we've marked as  
21 Exhibit 7, Mr. Langdon.

22 A Okay.

1 Q You see that this is an e-mail that you  
2 sent to Earl Comstock and Ellen Herbst on the  
3 evening of May 24th after the meeting with  
4 Secretary Ross?

5 A Yes.

6 Q And it's in the midst of the other  
7 e-mails that you were exchanging with census  
8 staff --

9 A Yep.

10 Q -- that are in Exhibit 6, correct?

11 A Yeah, exactly.

12 Q Okay. I assume that you were sending  
13 e-mails late at night like this because you felt  
14 it important to respond to urgent inquiries raised  
15 by the Secretary at the meeting with him, correct?

16 A That's one possibility. Other times I  
17 might be doing evening work because I had to,  
18 like, leave work early to do kids' stuff, and so  
19 I'm trying to catch up late at night. So it could  
20 be urgency or because I was making up for lost  
21 time.

22 Q Okay. Presumably that was not the case

1 on this date, because you had a very long meeting  
2 with the Secretary --

3 A That's probably true, yeah.

4 Q -- that you just got out of in the late  
5 afternoon, right?

6 A Yeah. So I'm probably trying to be  
7 responsive to Earl on something that was  
8 important.

9 Q Okay. And the important issue in this  
10 e-mail is the counting of illegal immigrants,  
11 correct? That's the subject?

12 A Let me take a look at it.

13 Q Sure.

14 A Uh-huh. Okay. Can you ask the question  
15 again?

16 Q Yeah. So the important issue that you  
17 were trying to be responsive to Earl about on the  
18 night of May 24th, after the meeting with  
19 Secretary Ross, was the counting of illegal  
20 immigrants, correct?

21 A So the -- the two cases I was looking  
22 into here, based on these e-mails, dealt

1 specifically with illegal immigrants.

2 Q Right.

3 A And so I was answering that question.

4 Q Right. And that was the important issue  
5 that you were trying to be responsive to Earl  
6 about, correct?

7 A Uh-huh. Because that's what the two  
8 documents dealt with.

9 Q Right. And the subject -- the subject --  
10 in fact, the subject of the e-mail is counting of  
11 illegal immigrants, correct?

12 A Yeah. That's correct.

13 Q Okay. And you say, in the first  
14 paragraph, "Earl and Ellen: Long story short is  
15 that the counting of illegal immigrants (or of the  
16 larger group of non-citizens) has a solid and  
17 fairly long legal history," correct?

18 A Correct.

19 Q And you go on to discuss a case,  
20 Louisiana v. Bryson, in which the courts rejected  
21 a challenge to including illegal immigrants in the  
22 census totals for apportionment purposes, correct?



1 A Uh-huh.

2 Q And that's the same case, Louisiana v.  
3 Bryson, that you referenced in your e-mail  
4 exchange with Mr. Geist [sic] in Exhibit 6,  
5 correct?

6 A Unless there's another Louisiana versus  
7 Bryson, it's the same case, yeah.

8 Q Fair to say it's the same case, given the  
9 timing of these e-mails?

10 A Yeah.

11 Q Okay. And that's a case that was passed  
12 along to you as part of the research package that  
13 Mr. Geist [sic] sent to you, correct?

14 A Yeah, exactly.

15 Q And you were sending this to address the  
16 question of whether certain immigrants should not  
17 be included in the apportionment count, correct?

18 MS. WELLS: Object to the form.

19 THE WITNESS: Yeah, I can't say that. I  
20 mean, what I'm answering here is actually just --  
21 it goes back to sort of scoping questions --  
22 right? -- I mean, who is counted and who is not

1 counted in the surveys.

2 BY MR. DURAISWAMY:

3 Q But specifically whether illegal  
4 immigrants are counted in the census counts for  
5 apportionment purposes, correct?

6 A That's what these cases dealt with.  
7 Yeah. So --

8 Q Right. And that's --

9 A -- Earl asked -- let me finish.

10 Q Go ahead.

11 A Earl asked me to basically review these  
12 and summarize them from my non-lawyerly point of  
13 view. And that's what I did.

14 Q Okay. He wanted you to provide some  
15 information about the history of including or  
16 excluding illegal immigrants from the census  
17 counts for apportionment purposes, correct?

18 MS. WELLS: Object to the form.

19 THE WITNESS: He wanted me to answer the  
20 question of how -- of what these cases actually  
21 looked at, which was whether or not illegal  
22 immigrants were part of the -- first of all -- two

1 things here. There's whether they're counted and  
2 then whether they're part of the apportionment  
3 counts, and distinguish between them.

4 BY MR. DURAISWAMY:

5 Q And which was it that you were  
6 addressing?

7 A Both, according to -- I mean, I'm just  
8 summarizing the cases. Right? So --

9 Q Right.

10 A -- I mean, the one case was dealing with  
11 apportionment. And the second one was actually  
12 just the broader question, based on this e-mail,  
13 of just whether or not illegal immigrants even  
14 should be counted.

15 Q Right. And you were conveying that  
16 there's a long history of both including illegal  
17 immigrants in the census count and including them  
18 in the counts for apportionment purposes, correct?

19 A Yeah.

20 Q Okay. Because Mr. Comstock wanted you to  
21 look into that issue, right?

22 A Yeah, he asked me to look into the --

1 BY MR. DURAISWAMY:

2 Q Or in the apportionment count.

3 MS. WELLS: Object to the form.

4 THE WITNESS: Yeah, I don't recall that  
5 specifically. I mean, what I asked about and --  
6 in my e-mail, and I think I would have been pretty  
7 precise, was citizenship.

8 BY MR. DURAISWAMY:

9 Q Mr. Langdon, it's not your sworn  
10 testimony here under oath that this issue was not  
11 discussed at that meeting, is it?

12 MS. WELLS: Object to the form.

13 THE WITNESS: I can't recall everything  
14 that was discussed in that meeting.

15 BY MR. DURAISWAMY:

16 Q Okay.

17 A As I -- actually, the e-mail suggested,  
18 it was a long meeting.

19 Q Okay. And in this midst of sending  
20 e-mails to census staff, to Mr. Comstock and  
21 Mr. Herbst on issues that were raised at the  
22 meeting earlier that day -- well, strike that.

1 Let me start over.

2 That evening, as you were exchanging  
3 e-mails with census staff about issues raised at  
4 the meeting with Secretary Ross, you were also  
5 exchanging e-mails with census staff and with  
6 Mr. Comstock and Ms. Herbst about the history of  
7 counting or not counting illegal immigrants in the  
8 census or in the apportionment counts, correct?

9 A So it's two related lines of -- it's two  
10 related questions. So I was getting information  
11 on both. One question was Earl's, and it was  
12 specific to these court cases dealing with illegal  
13 immigrants.

14 A related issue is whether or not -- you  
15 know, whether or not or how we count citizens in  
16 the decennial census.

17 Q Right. And why is it related?

18 A Well, because illegal immigrants are a  
19 subset of non-citizens.

20 Q In fact, you state that in this e-mail,  
21 correct?

22 A Which e-mail?

1 Q In this e-mail that we're looking at  
2 right now.

3 A I've got a couple --

4 Q Exhibit 7. You say, "Illegal immigrants  
5 (or of the larger group of non-citizens)," right?

6 A Yep. Actually, yeah. Making that  
7 connection right there. There you go.

8 Q Right. So this question of counting  
9 illegal immigrants is fundamentally connected to  
10 this issue of whether you are identifying citizens  
11 or non-citizens in the census, right?

12 A They're related, but that -- yeah. I  
13 mean, they're related, because you're talking  
14 about different subsets of, you know, the  
15 non-citizen population.

16 Q Right. And presumably they came up  
17 together in the meeting earlier that day, correct?

18 A I wouldn't --

19 MS. WELLS: Object to the form.

20 THE WITNESS: I don't share that  
21 presumption.

22 BY MR. DURAISWAMY:

1 Q You think it's a coincidence that you  
2 just happened to be writing an e-mail about  
3 counting of illegal immigrants at the same time  
4 that you're exchanging e-mails about Secretary  
5 Ross' curiosity about the citizenship question?

6 MS. WELLS: Object to the form.

7 THE WITNESS: Yeah. I do not recall the  
8 Secretary ever asking specifically about illegal  
9 immigrants that are counting [sic] on the decennial  
10 census. Citizenship, certainly, but not illegal  
11 immigrants specifically.

12 BY MR. DURAISWAMY:

13 Q So what prompted this e-mail?

14 MS. WELLS: Objection.

15 THE WITNESS: A request from Earl.

16 BY MR. DURAISWAMY:

17 Q When did you receive that request?

18 A I don't know. I'd have to go back and  
19 check. You know, if he sent me an e-mail,  
20 whenever I got that e-mail, if he asked me,  
21 then -- or Ellen, who is also on this.

22 Q What did he tell you about why he was

1 asking you to look into this?

2 MS. WELLS: Object to the form. You're  
3 assuming that he told you [sic]. He said he  
4 wasn't sure.

5 BY MR. DURAISWAMY:

6 Q You can answer.

7 A I do not recall whether Earl asked me or  
8 e-mailed me about it. And what the context was,  
9 you know, I can't give you the context on an ask  
10 that I don't remember.

11 Q Okay. You attached a memo to this  
12 e-mail, correct?

13 A The DOJ memo, somebody else's memo, yeah.

14 Q Well, those are my next questions. But  
15 there's an attachment to this e-mail that says --  
16 it's titled Crawford letter and DOJ memo.PDF,  
17 correct?

18 A Yeah.

19 Q What is that?

20 A I'd have to go back and look at it to see  
21 exactly what it was. I don't know.

22 Q It presumably relates to the subject of



1 your e-mail, correct?

2 A I hope so. Or Earl would not have been  
3 happy.

4 Q Fair to say that it is a memo addressing  
5 the counting of illegal immigrants either in the  
6 decennial census, period, or for purposes  
7 apportionment?

8 A Yeah.

9 MS. WELLS: Object to the form.

10 THE WITNESS: I would presume it relates  
11 to, as I reference in the e-mail, a Bush era --  
12 Bush 41 era DOJ opinion that proposed legislation  
13 excluding illegal immigrants from the decennial  
14 census.

15 BY MR. DURAISWAMY:

16 Q Okay. Do you know if you were involved  
17 in preparing the document?

18 A The DOJ opinion?

19 Q The attachment to your e-mail.

20 A Like, assembling it?

21 Q Drafting it.

22 A Well, there's nothing -- if I'm

AFTERNOON SESSION

(1:16 p.m.)

THE VIDEOGRAPHER: Going back on the record. The time is 1316.

(Deposition Exhibit Number 8 was marked for identification.)

Whereupon,

DAVID SANFORD LANGDON, was called for continued examination, and having been previously duly sworn was examined and testified further as follows:

EXAMINATION BY COUNSEL FOR KRAVITZ PLAINTIFFS  
BY MR. DURAISWAMY:

Q Good afternoon, Mr. Langdon. Handing you what we've marked as Exhibit 8.

Have you had a chance to review the document, Mr. Langdon?

A This one, yes.

Q Okay. This is a further e-mail exchange in response to what I believe is Exhibit 7, the e-mail that you sent to Mr. Comstock and Ms. Herbst on May 24th about the counting of

1 illegal immigrants, correct?

2 A Correct.

3 Q Okay. And in his response, Mr. Comstock  
4 raises the question of whether the -- strike that.

5 In response to Mr. Comstock asks about  
6 why the decennial census does not include the  
7 citizenship question, but the ACS does, correct?

8 A Yeah.

9 Q Okay. And then he identifies a case that  
10 he believes is relevant to the governmental need  
11 for citizenship data, correct?

12 A Uh-huh.

13 Q Okay. And you respond and say that you  
14 have asked the Census Bureau team for more clarity  
15 on how they decide what topics to include in the  
16 decennial versus ACS, correct?

17 A Yes.

18 Q And that is consistent with the e-mail  
19 that I believe we saw in Exhibit 6 where you were  
20 posing that question, I believe, to Lisa  
21 Blumerman, correct?

22 A And Burton Reist and Melissa Creech, yes.

1           Q     Right. And you say that your hunch is  
2     "that the policy change on the citizenship  
3     question is tied to the creation of the ACS. I  
4     will share what they say and will review the court  
5     case."

6                     You recall that they, meaning the Census  
7     Bureau staff, came back to you with an explanation  
8     as to why the citizenship question was on the ACS,  
9     but not the decennial?

10          A     I can't remember the exact answer. My  
11     hunch wasn't entirely correct, actually, so, I  
12     mean, the -- it was only a hunch. The -- I mean,  
13     the -- there was confusion here between the --  
14     what used to be the short-form --

15          Q     Right.

16          A     -- census, which is now the regular  
17     census, the long-form census and then ACS.

18          Q     So what do you recall that the Census  
19     Bureau staff told you after looking into this  
20     question?

21          A     Regarding the citizenship specifically?

22          Q     Yes. As to why it was on the ACS but not

1 the decennial.

2 A Actually, I don't recall exactly why it  
3 was not on, like, what would have been, like, the  
4 short form or the decennial. The question -- I  
5 think a lot of the conversation was about -- more  
6 about what actually is on there and what the  
7 justifications are for it, what the legal  
8 justifications are.

9 I mean, to be frank, I mean, if nobody  
10 asks for something to be on the census, it's not  
11 on there. Right? So I mean -- so I'm not sure if  
12 they could have answered why -- I don't know. I  
13 don't recall the specific answer to the question.  
14 Probably well documented.

15 But in any case, I mean, there's always a  
16 decision on -- going back to, actually, our much  
17 earlier conversation about this survey length and  
18 response rates and such -- I mean, there's a  
19 decision about what needs to be asked of the  
20 entire U.S. and what could be asked of a really  
21 large sample.

22 Q And to your recollection, that was part

1 of the consideration as to why the citizenship  
2 question was asked on the ACS but not on the  
3 decennial, correct?

4 A It presumes that somebody actually  
5 asked whether there should be -- I mean, the  
6 citizenship question hadn't been on what was the  
7 short form in, if I recall right, you know, at  
8 least a couple of -- a few decades. And so, I  
9 mean, that would suggest that there hadn't been a  
10 strong case made for it to be on there at that  
11 point. There hadn't been a need. But I don't  
12 know specifically. I'm just, you know...

13 Q Right. And you indicate in your previous  
14 answer that it's also presumably connected to this  
15 concern about survey length and response rates as  
16 well, correct?

17 A Yeah. Exactly.

18 Q You also say that you're going to look  
19 into -- review the court case, correct?

20 A Yep.

21 Q Your understanding that this court case  
22 regarding the governmental need for citizenship

1           Q     Okay. Prior to learning about the  
2     discussions with DOJ regarding this issue in late  
3     summer or early fall of 2017, did you have any  
4     discussions with anyone about the need for  
5     citizenship data for voting rights purposes other  
6     than what's reflected in Exhibit 8? Let me try  
7     that again, because it's kind of a long question.

8           A     Yeah, it was. Thank you.

9           Q     What I'm trying to understand is, in  
10    Exhibit 8, Mr. Comstock e-mails you with this,  
11    quote/unquote, relevant court case on the  
12    governmental need for citizenship data, correct?

13          A     Uh-huh.

14          Q     And then some months later you become  
15    aware of conversations between Commerce Department  
16    and Department of Justice regarding the potential  
17    need for citizenship data for DOJ purposes,  
18    correct?

19          A     Uh-huh.

20          Q     Prior to your becoming aware of those  
21    conversations and separate and apart from this  
22    communication, do you recall any other discussions

1 with anyone else about whether DOJ had a need for  
2 citizenship data?

3 A So I've looked on the ACS side -- yeah --  
4 I mean, conversations isn't the right word. But  
5 in my -- as I gathered background just to  
6 become -- to gain a better understanding of why  
7 topics are included on the ACS in particular --  
8 and I looked at, you know, the publicly available  
9 documentation --

10 THE REPORTER: And I looked at the...

11 THE WITNESS: Publicly available  
12 document, you know, the report the Census Bureau  
13 does on federal uses, and I looked at, for  
14 example, citizenship, and there it outlined  
15 pretty -- you know, all the different uses,  
16 including the Voting Rights Act uses.

17 And so that, at some point -- I mean, it  
18 probably fell within this window of time. And at  
19 some point, I would have discussed it or shared  
20 with it James Uthmeier.

21 BY MR. DURAISWAMY:

22 Q When?



1           A       I don't know. I mean, it would have  
2       been -- it could have been, like, probably late  
3       fall. There was, like, a point where I, like,  
4       gained better understanding, and there was a  
5       point, like, later on where, like, I actually  
6       discussed it with him.

7           Q       Do you recall if it was before or after  
8       the late summer, early fall time period when  
9       you --

10          A       After. It was after.

11          Q       Okay.

12          A       Yeah. It was -- yeah.

13          Q       Okay. So prior to the late  
14       fall -- strike that.

15                 Prior to late summer, early fall time  
16       period, and separate and apart from what's in  
17       Exhibit 8, do you recall any other discussions  
18       with anyone else about whether DOJ had a need for  
19       citizenship data from the decennial census?

20          A       I don't think so, no. I mean, no, I  
21       don't think so.

22          Q       You don't remember anything?

1 mentioned this earlier -- that he's been heavily  
2 engaged with Census Bureau staff practically since  
3 he came on as Secretary on a whole variety of  
4 issues -- actually, kind of -- basically what it  
5 says here, on a whole variety of issues regarding  
6 the census.

7 MR. DURAIWAMY: Move to strike as  
8 nonresponsive everything after "it would be  
9 unusual for somebody to do it on their own."

10 (Deposition Exhibit Number 10 was marked  
11 for identification.)

12 BY MR. DURAIWAMY:

13 Q Mr. Langdon, I'm handing you what we've  
14 marked as Exhibit 10.

15 A Uh-huh.

16 Q This is an e-mail that you sent to Sahra  
17 Park-Su --

18 A Yep.

19 Q -- a few months ago, June 22nd, 2018. Do  
20 you see that?

21 A Uh-huh.

22 Q And you forwarded her a news article

1 titled, "Commerce Secretary suggested citizenship  
2 question to Justice Department, according to memo,  
3 contradicting his congressional," correct?

4 A Uh-huh.

5 Q And that's a reference to the memo that  
6 we just looked at in Exhibit 9, correct?

7 A Uh-huh.

8 Q Why did you send this to her?

9 A Sahra and I were colleagues. We worked  
10 together both on Census Bureau issues, and so it's  
11 par for the course that we would share, you know,  
12 relevant press articles about things we're working  
13 on.

14 Q What was your reaction to this article  
15 when you read it?

16 A My reaction to the article?

17 Q Yeah.

18 A Surprise, yeah.

19 Q Why were you surprised?

20 A Well, I mean, the idea of saying  
21 something and then contradict -- you know, saying  
22 something else that appears to contradict it is --

1 it surprised me.

2 Q What he had testified to in Congress  
3 appeared to be contradicted by the memo that's  
4 Exhibit 9, correct? That's what the article  
5 indicated?

6 A Yeah.

7 Q Was that -- that was concerning to you?

8 A Concerning to me? No. I thought it was  
9 interesting.

10 Q Surprising?

11 A Yeah, surprising.

12 Q Okay. Is there a particular reason that  
13 you wanted Ms. Park-Su to be aware of this?

14 A As I stated before, we worked a lot on  
15 Census Bureau issues in the policy office  
16 together. We sit also literally right next to  
17 each other, from here -- we sat from here to  
18 there, so we --

19 Q No, I understand. And I'm trying to  
20 understand if this was more of, like, here's  
21 something related to the census that you might be  
22 interested in, or if there was something specific

1 not part of.

2 Q No, I'm not asking you if you can  
3 affirmatively corroborate everything that's in  
4 Exhibit 9. I'm just asking to confirm that you  
5 don't have a basis to dispute anything that's in  
6 Exhibit 9. Either these are things that you agree  
7 with or there are things of which you have no  
8 knowledge; is that correct?

9 A No, it's -- I think it's a reasonable  
10 statement.

11 Q What statement? What I just said or --

12 A No.

13 Q -- Exhibit 9?

14 A Exhibit 9. Your question was reasonable  
15 too.

16 Q I appreciate that.

17 We talked earlier about the census  
18 oversight meetings which occur approximately  
19 monthly, correct?

20 A Yep.

21 Q One of which was the May 24th meeting  
22 that we've talked about, correct?

1 Ross or Mr. Comstock or anyone else about  
2 Secretary Ross' request to include the citizenship  
3 question by May of 2017, correct?

4 A Yeah. I mean, that's -- yeah, that's not  
5 my recollection.

6 Q Okay. But it could have been shortly  
7 thereafter?

8 A That he wanted there to be a citizenship  
9 question added?

10 Q That you came to understand that.

11 A It was certainly after that. I can't say  
12 shortly or longly. I mean, it would have been  
13 from May through the summer.

14 Q At some point between May and the end of  
15 the summer, correct?

16 A I would say probably, yeah.

17 Q Okay. And what was your involvement in  
18 acting on his request from the summer of 2017  
19 through the March 2018 announcement of the  
20 addition of the citizenship question on the 2020  
21 census?

22 A It was light. I mean, it was pretty

1     sometime during the summer, give or take a month.  
2     When I say late summer, it would be, like, August.  
3     Maybe August -- August could have been July; July  
4     could have been September. I don't know exactly,  
5     to be frank.

6           Q     But the conversation -- the first  
7     conversation with Earl that you recall would have  
8     been roughly around the time that you first  
9     remember learning that Secretary Ross was  
10    interested in adding the question to the census,  
11    correct?

12          A     Yeah. I mean, because that's -- that --  
13    the Secretary expressing interest in it would lead  
14    to follow-up activity, and that would include  
15    conversation with Earl or others.

16          Q     Okay. That's all I'm trying to  
17    understand. It's not a trick question. I'm just  
18    trying to make sure I understand what you remember  
19    and what you don't remember.

20          A     Yeah.

21          Q     Okay. So apart from reviewing the draft  
22    Abowd memo, what other involvement did you have in

1 assessing this issue or pursuing it between the  
2 summer of 2017 and March 2018?

3 A I don't think anything, really. I mean,  
4 the main case was reviewing that memo.

5 THE REPORTER: I'm sorry.

6 THE WITNESS: Nothing that I can recall.  
7 That was -- that was the meat of it, really, was  
8 that analysis.

9 BY MR. DURAISWAMY:

10 Q Do you recall attending meetings where  
11 this issue was discussed?

12 A No. I mean, I knew that -- I was aware,  
13 certainly, that the Secretary was scheduling quite  
14 a few meetings and calls regarding this, you know,  
15 different experts and such. I was aware of that.  
16 But I didn't -- I didn't take part of in any of  
17 them.

18 Q Do you believe the issue being discussed  
19 at any of the monthly oversight meetings?

20 A No. Because it was sort of a -- it was  
21 a -- sort of separate line of work. Right? I  
22 mean, it was something that -- it was something --



1 correct?

2 A Yeah. I'd have to go back and see  
3 when -- I think the memo came in December, maybe.  
4 I don't remember exactly.

5 Q Did you ever do any work assessing the  
6 possible effects of adding a citizenship question  
7 to the decennial census?

8 A Analysis? No. No, we relied on what the  
9 Census Bureau prepared.

10 Q My question is whether you ever did any  
11 work related to that issue.

12 A I guess I don't understand the question.

13 Q Well, let me ask it differently. Did you  
14 ever have any discussions with anyone about the  
15 potential effects of adding a citizenship question  
16 to the decennial?

17 A I talked to John a couple of times after  
18 we got the memo, just to make sure I understood  
19 some of the analysis, had some questions about it.

20 Q What was the substance of those  
21 conversations?

22 A I'd have to go back and look. I mean, I

1 making in your previous answer? How --

2 A That it's not easy. It's not easy. It  
3 takes a lot of work. And you have to -- the  
4 reason it takes a lot of work is because the  
5 administrative data may not measure what you think  
6 it's measuring, how you think it's measuring it.

7 Q Are you aware of any testing that's been  
8 done to evaluate the effects of including a  
9 citizenship question on the 2020 decennial on  
10 response rates or the accuracy of -- and quality  
11 of survey data?

12 A So the -- no, so there hasn't been.  
13 There hasn't been any testing to date. And the  
14 time frame wouldn't -- the Secretary's decision  
15 wouldn't -- you know, wouldn't accommodate that  
16 kind of testing.

17 That said, the Census Bureau presented a  
18 reasonable -- very reasonable alternative to get  
19 at those kinds of issues, which was looking at,  
20 you know, the impacts -- there was no change.  
21 Citizenship has always been part of the American  
22 Community Survey, but nonetheless, looking at

1 how -- you know, just how that plays out, you  
2 know, what impact -- the John Abowd memo goes into  
3 that --

4 THE REPORTER: I'm sorry.

5 THE WITNESS: The John -- the memo he  
6 prepared goes into how citizenship might  
7 potentially -- how information from the American  
8 Community Survey and how it's collected may  
9 indicate potential impacts on self-response rates  
10 in the 2020 census.

11 BY MR. DURAISWAMY:

12 Q Did you have any conversations with  
13 outside stakeholders or parties outside the  
14 Commerce Department about the effects of adding a  
15 citizenship question to the 2020 census?

16 A No. I did not.

17 Q Do you know who was principally  
18 responsible for those conversations?

19 A For organizing them? For, like -- or for  
20 scheduling them?

21 Q Both organizing and actually  
22 participating in the conversations.

1 number of reasons, because of the quality of the  
2 answers, because they're burdensome, or whatever,  
3 and whether or not we should consider using  
4 administrative data as a substitute for that. And  
5 nowhere in that content review had any problems  
6 with the question ever surfaced in terms of either  
7 people not wanting to respond to it ever or in  
8 terms of quality issues with the responses.

9 Q In the time that you've worked at the  
10 Commerce Department and had a responsibility for  
11 issues related to the work of the Census Bureau,  
12 do you recall ever hearing about the Department of  
13 Justice being interested in census block-level  
14 citizenship data for purposes of Voting Rights Act  
15 enforcement?

16 A No.

17 Q There's a process by which government  
18 agencies communicate with the Census Bureau about  
19 their data needs, correct?

20 A Yeah. I mean, "process" is maybe a  
21 generous word for it. But, yeah, there's a  
22 protocol by which -- that the Census Bureau has

1 actually developed with the -- actually, as part  
2 of the last content review for the American  
3 Community Survey --

4 THE REPORTER: Part of the last...

5 THE WITNESS: The content review for the  
6 American Community Survey through which, you know,  
7 they conducted outreach on to the need for data  
8 and examined that need and weighed it. And it's  
9 come up in a few different contexts, most recently  
10 with the same SOGI, the sexual orientation and  
11 gender identification question. It came up with a  
12 health insurance question in the last couple of  
13 years related to the Affordable Care Act.

14 And so there's -- there's not -- I  
15 wouldn't say there's a linear process. There's  
16 frequently a dialogue between agencies at  
17 different levels and the Census Bureau regarding  
18 data needs and the right way to meet those needs.

19 BY MR. DURAISWAMY:

20 Q Let me hand you what we've marked as  
21 Exhibit 12.

22 (Deposition Exhibit Number 12 was marked

1 Q Right. But my question is, does the  
2 bureau periodically seek input from other  
3 agencies, not just as to the ACS, but to other  
4 surveys that it administers?

5 A Yeah. So keep in mind that the Census  
6 Bureau has a lot of reimbursable surveys. So  
7 these are surveys that it conducts for any number  
8 of agencies. An agency has a need, like, say, HUD  
9 or DOJ, to have a specific survey on a specific  
10 topic, and it will come to the Census Bureau, pay  
11 them for it, and develop the survey together. So  
12 that's one venue of dialogue. This -- so, yeah,  
13 absolutely.

14 And this is another venue, which was part  
15 of the ACS content review, and reaffirmations from  
16 agencies about what data they needed.

17 Q You don't see any indication in this  
18 letter that the Department of Justice is  
19 dissatisfied with the nature or quality or --  
20 nature or quality of the citizenship data that's  
21 provided from the ACS survey, do you?

22 A They don't make any statement about the

1 make sure that the 2020 census is operationally  
2 ready.

3 Q Have you had any conversations with  
4 Mr. Comstock regarding the citizenship question  
5 that you can recall since late summer 2017?

6 A No.

7 Q Apart from Mr. Uthmeier, do you recall  
8 any conversations -- well, strike that.

9 Apart from Mr. Uthmeier and whatever  
10 conversations you have had at these meetings  
11 related to responding to citizenship inquiries, do  
12 you recall any other conversations with folks at  
13 the department about the citizenship question?

14 MS. WELLS: Object to the form.

15 THE WITNESS: Okay. Actually, to go back  
16 on the question about Earl, I would have -- I  
17 mean, to be clear, as far as, like, the clearances  
18 go, that's quite -- I'm sure I've, you know,  
19 brought, you know, responses to him and discussed  
20 with him, you know, edits and such that he's had  
21 to the citizenship question. That's certainly the  
22 case.

1 THE REPORTER: Slow down, please.

2 THE WITNESS: It's an implementation  
3 phase. The Secretary -- it's on the Census Bureau  
4 now to implement his decision to add this question  
5 and, you know, get the systems ready. And  
6 that's -- there's really not much more to discuss  
7 in a way. We're not Monday morning -- I'm not the  
8 Monday morning quarterback for the Secretary's  
9 decision on this.

10 (Deposition Exhibit Number 15 was marked  
11 for identification.)

12 BY MR. DURAISWAMY:

13 Q I'm handing you what we've marked as  
14 Exhibit 15. Have you seen this document before?

15 A Let me take a look at it.

16 Q Sure.

17 A Not this exact one. I've seen, like,  
18 versions of it.

19 Q What is it?

20 A As I look at it, it's sort of a Q&A,  
21 right, regarding the -- so it's -- basically, it's  
22 a Q&A document regarding aspects of the decision



1 to include the citizenship question.

2 Q Were you involved in preparing this  
3 document?

4 A Not drafting it.

5 Q Well, what involvement did you have?

6 A I might have sort of -- like, you know,  
7 like in my policy role, I reviewed or cleared  
8 parts of it. I can't remember specifically. I've  
9 seen the document before.

10 And some of it -- the reason I'm waffling  
11 on it is because some of the pieces are -- I've  
12 seen in different contexts, you know, in, you  
13 know, letter responses or other places. I'm  
14 generally familiar with the content.

15 Q What was the purpose of the document?

16 MS. WELLS: Object to the form.

17 BY MR. DURAISWAMY:

18 Q Why was the document prepared?

19 A I can't say specifically why it was  
20 prepared, but its purpose is -- essentially, it's  
21 a Q&A document, almost like an FAQ. That's the  
22 way I see it.

1 Q For whom?

2 A I don't know. I mean, I'm not sure. I  
3 can't remember the context under which it was put  
4 together.

5 Oh, wait a second. No, actually, this  
6 may have been -- actually, no, this is my mistake.  
7 This is -- it looks like it's a response -- it's  
8 responses from the Census Bureau regarding  
9 questions from -- about John's memo.

10 BY MR. DURAISWAMY:

11 Q Questions prepared by whom?

12 A By the department. I would have had a  
13 role in preparing -- you know, in raising issues  
14 to include. I didn't -- I think the questions  
15 probably came from Earl, ultimately. But, you  
16 know, there are a variety of people who reviewed  
17 John's memo and provided -- you know, had  
18 questions about the content of it, analytical  
19 questions. I mean, these are all, like, you  
20 know...

21 Q You had a role in drafting these  
22 questions, correct?

1 A Yeah, I did.

2 Q At whose direction?

3 A At -- either Earl or James.

4 Q What did they -- what did they tell you  
5 when they asked you to prepare these questions?

6 A Well, not -- I mean, when they asked me  
7 to review the memo and provide input, it was  
8 basically, you know, review it and give me your  
9 opinion on it, really.

10 Q Well, these are -- this is a list of  
11 questions.

12 A Yeah.

13 Q And you said that --

14 A And my opinion would be through -- like,  
15 what -- in other words, what -- you know, go  
16 through it, and sort of like I mentioned earlier,  
17 so I go through and I flag things that weren't  
18 clear to me or that, you know, the analysis wasn't  
19 clear or, like -- you know, it's like a peer  
20 review almost.

21 Q Somebody decided that you should respond  
22 to the Abowd memo in the form of a series of

1 questions, correct?

2 A Uh-huh.

3 Q Who decided that?

4 A Either Earl or James.

5 Q Okay. And one of them directed you to  
6 participate in preparing those questions, correct?

7 A Yes.

8 (Deposition Exhibit Numbers 16 and 17  
9 were marked for identification.)

10 BY MR. DURAISWAMY:

11 Q And if you look at Exhibits 16 and 17,  
12 which I've just given you -- sorry, they're on the  
13 way to you -- these are e-mail exchanges among  
14 individuals involved in preparing those questions,  
15 including yourself, correct?

16 A Let me look at it.

17 Q Sure.

18 MR. CANNON: Counsel, can you verify 16  
19 and 17, please?

20 MR. DURAISWAMY: Fair point. So 16 is  
21 Bates number 1976. And 17 is, I believe, 5212.

22 MR. CANNON: Thank you.

1 MS. WELLS: Thanks.

2 MR. DURAISWAMY: Sure.

3 THE WITNESS: So this was -- yeah.

4 There's John's reference to our conversation.

5 Yeah. So, I mean, the nature of the  
6 questions was, you know, probably just -- it was a  
7 very tactical memo. It wasn't written for, like,  
8 a lay audience, I thought. And so part of our  
9 questions were just to help us understand it  
10 better just in general. And part of it was to  
11 actually question -- you know, to raise questions,  
12 like a peer review, of aspects of the analysis.

13 BY MR. DURAISWAMY:

14 Q To raise questions to push back on  
15 aspects of the analysis, correct?

16 A Push back is not the word -- phrasing I  
17 would use. But it's just to -- you know, it's  
18 like a peer review. So you're picking apart  
19 different aspects of it. That's -- this is  
20 something we do, like, when we do economic  
21 reports. We would send things around and --  
22 and -- yeah, you know, you're just, you know,

1 trying to, you know, make sure that the analysis  
2 is rock solid and all the implications of it are  
3 clear.

4 Q You understood at the time that senior  
5 officials in the Commerce Department wanted to  
6 move forward with the citizenship question on the  
7 2020 census, correct?

8 A Uh-huh.

9 Q And you understood that this memo from  
10 John Abowd was taking the position that it would  
11 be a bad idea to do that, correct?

12 A Yep.

13 Q And --

14 A Well, let me -- bad idea. He  
15 presented -- what's "it" here? I guess "it" is,  
16 is it adding -- he provided -- the Secretary  
17 wanted data on citizenship at a granular level.  
18 And the options -- he laid out options for doing  
19 that. It was an options memo. So one of the  
20 options was not get it, not do it. The second  
21 option I remember was relying on the ACS. The  
22 third option was add it to the Census Bureau

1 survey. And another option was, like,  
2 administrative data.

3 So it's, like -- you know, the analytical  
4 question is, okay, we want more granular  
5 citizenship data; how are we going to get it?  
6 Does it make sense to use the 2020 census for  
7 those purposes?

8 And so -- I mean, bad idea, I think, is  
9 an exaggeration of it, but it's a -- he -- John  
10 advocated for administrative data and not for  
11 using it on the 2020 census.

12 Q The -- he characterized the proposal to  
13 add a citizenship question to the 2020 census as  
14 something that would be very costly, harm the  
15 quality of the census count, and use substantially  
16 less accurate citizenship status data than are  
17 available from administrative sources, correct?

18 A Uh-huh.

19 Q This was not a recommendation to proceed  
20 with the plan to add a citizenship question to the  
21 2020 census, correct?

22 A So he was -- he was not a fan of it, to

1 say the least, but --

2 Q It was critical of the idea, correct?

3 A Yeah, but --

4 Q Okay.

5 A -- so -- but then my role was to sort  
6 of -- that draft -- that draft. I didn't see the  
7 final memo. And then our -- my job was to read  
8 through it and say, okay, well, there's a  
9 narrative here, and there's data that supports it,  
10 and then there's sort of the way the Census Bureau  
11 operates. And not all those aspects actually  
12 added up.

13 And so, for example, his statement -- and  
14 I raised this for Earl -- was, you know, his  
15 statement about the quality of the data. So my  
16 reaction was, well, if there are data quality --  
17 he basically suggested the survey question is not  
18 going to get you good data. And so my response  
19 was, well, you're trying to have it both ways as  
20 the Census Bureau. You're flagging this issue,  
21 but at the same point, we've had this question on  
22 the ACS for years. We've been giving it to DOJ



1 and other users, through special tabulations, for  
2 years. It's never surfaced until now. And even  
3 now that the Census Bureau is arguing that there  
4 are these data quality issues -- and we can set  
5 aside whether or not there actually are data  
6 quality issues, but let's say there are. Then I  
7 questioned him, why is the Census Bureau not  
8 taking action to address the fact that they're  
9 still using this question on the American  
10 Community Survey? And there was the dissonance  
11 there that didn't make sense. It still doesn't  
12 make sense to me.

13 Q So you don't know if there are data  
14 quality issues with asking people to self-report  
15 citizenship or not?

16 A So you could --

17 Q Or you don't have an opinion about that?

18 A He argued in the memo that there were --  
19 there were, you know, problems with the  
20 non-citizenship estimate. And so my response is,  
21 okay, that's fine. You're saying this. I  
22 understand your point. But then if it's such an

1 questions you put on it, but it's the flow of  
2 them. So that's -- you know, it's not a minor  
3 issue. It's not something you take lightly.

4 Q I agree.

5 A The other thing I just wanted to flag --  
6 the other thing I thought was inconsistent was  
7 this question about his recommendation to use  
8 administrative records. And so again, I raised  
9 for Earl that the Census Bureau was pretty much on  
10 the tail end of having done, you know, a lot of  
11 years of research on how to use administrative  
12 records to conduct a successful decennial census.  
13 A lot of work. And so -- and it was good work.  
14 And it's inconsistent with that long,  
15 thoughtful, methodological, careful approach to  
16 say, okay, well, here's this data field that the  
17 Secretary would like to add to the decennial  
18 census, and we think we should just go ahead and,  
19 two years from now, get this data through  
20 administrative records. That's not consistent  
21 with the way the Census Bureau tends to approach  
22 those kinds of decisions.

1           It's a very short time frame.   And they  
2   had a limited -- at least at that point -- I don't  
3   know what they have now, but they had a limited  
4   set of administrative records to go on.

5           Q     Did you participate in any meetings with  
6   Secretary Ross in January, March -- February or  
7   March regarding this addition of a citizenship  
8   question to the census?

9           A     No.   Like -- like, reviewing the  
10   research, do you mean?   Like -- or pondering it  
11   or...

12          Q     Any meetings with Secretary Ross  
13   regarding the additional of a citizenship question  
14   to the 2020 census?

15          A     I don't think so, no.   No.   I mean, the  
16   kind of meetings with the agenda you just showed  
17   me, like the steering committee?   Those kind of  
18   things?

19          Q     Any meetings.   Is there something unclear  
20   about my use of the word "meeting"?

21          A     No.   Meeting is very clear.   I appreciate  
22   that.

1 the questions in -- I believe it's Exhibit 15?

2 A Like, specifically?

3 Q Yeah.

4 A No, I can --

5 Q Or generally.

6 A I mean, generally, it probably would have  
7 been John, and then it would have been cleared  
8 through -- you know, all the way up through Ron  
9 Jarmin.

10 Q Do you know if anyone at the Commerce  
11 Department changed any of the answers that the  
12 Census Bureau provided?

13 A I don't know. I did not. I don't have  
14 any reason to believe anybody else did. It's a  
15 Census Bureau product.

16 Q Do you think it would be appropriate if  
17 someone at the Commerce Department changed answers  
18 that were provided by the Census Bureau?

19 MS. WELLS: Object to form.

20 THE WITNESS: I mean -- appropriate? I  
21 mean, look, when we receive materials of any  
22 nature -- this could be an example from the Census

1 Bureau -- there can be questions about it and  
2 there can be a process by which it gets reviewed  
3 and edited or revised. You know, that would  
4 involve a dialogue with the Census Bureau about  
5 what did you mean here, you know, what -- what is  
6 this, and it could involve Commerce Department  
7 staff taking a pen and -- you know, and revising  
8 an answer, but not on a sort of one-off, freelance  
9 basis.

10 BY MR. DURAISWAMY:

11 Q Are you aware of any external analyses  
12 that were solicited regarding the impact of the  
13 citizenship question on the quality or accuracy of  
14 the census data?

15 A Like, written analyses? Not that I'm  
16 involved with, no, I don't know of any. I mean,  
17 the Secretary had a lot of outside meetings, you  
18 know, like, for example, with former Census Bureau  
19 directors, people like that, but not that I'm  
20 aware of. Certainly nothing I reviewed.

21 Q I mean, is the answer, no, you're not  
22 aware of any external analyses beyond what the

1 Census Bureau did regarding the effects of adding  
2 a citizenship question to the census?

3 A That's a good summary of my answer.

4 Q Okay. Do you know if your e-mail files  
5 were searched for purposes of producing documents  
6 in this lawsuit?

7 A I do know that and, yes, they were  
8 searched.

9 Q Were your paper files searched?

10 A Yes, I provided a folder of paper files.

11 Q You mentioned that you have -- sometimes  
12 take notes on the PowerPoint presentations that  
13 are essentially -- it sounds like pre-reads for  
14 these monthly census team meetings, correct?

15 A They're more handouts during the meetings  
16 as opposed to pre-reads. But, yeah, I had a  
17 file -- I have a file and I provided that.

18 Q For purposes of responding to discovery  
19 in this case?

20 A Yes.

21 Q Do you ever send text messages for work  
22 purposes?

1 A Yeah, I don't know.

2 Q Did you have any involvement in preparing  
3 the March 26th memo announcing the decision to add  
4 a citizenship question for the 2020 census?

5 A No.

6 Q Do you know who was involved in that  
7 process?

8 A Not off the top of my head. I don't  
9 know.

10 Q So you testified earlier that you were  
11 not -- strike that.

12 You testified earlier that you first  
13 learned about Secretary Ross' intent to add a  
14 citizenship question around late summer of 2017,  
15 correct?

16 A Mid to late summer, I think I said, yeah.

17 Q Okay. And I believe you testified that  
18 you were not aware of or involved in any  
19 discussions regarding the need for a citizenship  
20 question for DOJ or voting rights purposes before  
21 that time, correct?

22 A Not that I recall, no.

1 Q Okay. And the discussions about adding a  
2 citizenship question to the census were not part  
3 of the monthly census briefings that you  
4 participated in, correct?

5 A No, not -- no. Like the -- like the  
6 analysis, you mean? Not that I can recall, no.

7 Q And, in fact, I believe you testified  
8 that there was sort of a separate process at the  
9 senior level that was handling that, correct?

10 A I did testify to that, yep.

11 THE REPORTER: I'm sorry?

12 THE WITNESS: I did testify to that.

13 BY MR. DURAISWAMY:

14 Q You are the senior policy advisor for  
15 statistical agencies at the Department of  
16 Commerce, correct?

17 A Uh-huh.

18 Q And you are the senior-most career  
19 staffer for issues of policy and strategy as it  
20 relates to the Census Bureau, correct?

21 A Yeah. Although at that time I shared a  
22 lot of the policy duties regarding -- specific to



1 to 2020 census with Sahra Park-Su. So we -- we  
2 shared a lot of that work for a while.

3 Q She was a policy advisor as well?

4 A Yes.

5 Q Do you know if she was involved in any of  
6 those discussions that you were not involved in?

7 A I don't know.

8 Q There's no one else in the Office of the  
9 Secretary who has more experience dealing with  
10 issues of policy and strategy as it pertains to  
11 the Census Bureau than you, correct?

12 A Currently, yeah. I mean, just by merit  
13 of age and experience in the department, that's  
14 probably accurate, yeah.

15 Q And you were basically not involved in  
16 the process of deciding to add a citizenship  
17 question, right?

18 MS. WELLS: Object to the form.

19 THE WITNESS: I was not involved in --  
20 yeah. I mean, I provided input -- I mean, this is  
21 the way I operate -- I mean, the way I work. I  
22 mean, I -- I respond to the needs of my boss.

1 And, you know, when he engaged me on specific  
2 matters, I responded and provided input.

3 But if he didn't engage me and ask for my  
4 input, then I didn't provide it. I had no  
5 shortage of policy matters to deal with. So...

6 BY MR. DURAISWAMY:

7 Q And you can't recall being engaged on --  
8 for your input on the issue of whether to add a  
9 citizenship question until, at the earliest,  
10 January 2018; is that correct?

11 MS. WELLS: Object to the form.

12 THE WITNESS: I provided input to John's  
13 memo, whenever that came in -- I mean, whatever  
14 the date is on that. That came in. That was a --  
15 you know, that was the Census Bureau's analysis  
16 regarding, you know, what they -- their views on,  
17 you know, how to provide citizenship data to the  
18 Secretary at the level that DOJ was asking for.  
19 And I provided input into that.

20 BY MR. DURAISWAMY:

21 Q Take a look at Exhibits 15, 16 and 17.  
22 Does that refresh your recollection that that was

1 day. Right?

2 Q Did you review any other memos prepared  
3 by John Abowd regarding the addition of a  
4 citizenship question?

5 A No.

6 Q Did you review the memo analyzing  
7 alternative D?

8 A So alternative D, just to be clear, is  
9 that the one with the blending of the survey and  
10 administrative data?

11 Q Is that your understanding of  
12 alternative D?

13 A I'm asking. I mean, like I say, this was  
14 an iterative process, so...

15 Q Well, do you recall reviewing a memo  
16 analyzing alternative D?

17 A I'm aware of alternative D. I mean, I  
18 think I may have seen a version of it, yeah,  
19 but it's...

20 Q Did you ever have any discussions with  
21 the Secretary about alternative D?

22 A No. I mean, as I stated earlier, the

1 Secretary and I have not had conversations about  
2 this -- this matter, really.

3 Q So when these parallel meetings were  
4 going on regarding the addition of a citizenship  
5 question that were taking place outside the  
6 context of the monthly census briefings, who was  
7 participating in those meetings, if not you?

8 MS. WELLS: Object to form.

9 THE WITNESS: I believe you asked this  
10 earlier, and --

11 BY MR. DURAISWAMY:

12 Q If you know.

13 A -- I said I don't know. Yeah, you've  
14 asked this before. But -- yeah.

15 Q You have, like, not the slightest idea --  
16 like, you don't even have a reasonable basis to  
17 believe that Earl Comstock was involved in those  
18 meetings?

19 A And, of course -- I mean, yeah, but, I  
20 mean, that's -- you know, it's a question of who  
21 is meeting when on what. And it's not my -- I can  
22 hypothesize, of course. I mean, it would be

1 New York Immigration, Et. Al, v. US. Dept. of Commerce.

2 David Langdon

3 ACKNOWLEDGMENT OF DEPONENT

4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the foregoing  
6 pages and that the same is a correct  
7 transcription of the answers given by  
8 me to the questions therein propounded,  
9 except for the corrections or changes in form  
10 or substance, if any, noted in the attached  
11 Errata Sheet.

12  
13 \_\_\_\_\_  
14 DATE

13 \_\_\_\_\_  
14 SIGNATURE

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21 3073342  
22

# EXHIBIT H

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

\_\_\_\_\_  
:  
CITY OF SAN JOSE, et al., :  
:  
Plaintiffs, :  
: Case No.  
vs. : 3:18-cv-2279-RS  
:  
WILBUR ROSS, JR., et al., : Global objection:  
: 401; 403  
Defendants. :  
\_\_\_\_\_:

Thursday, October 25, 2018

Videotape Deposition of SAHRA PARK-SU,  
taken at the Law Offices of Manatt, Phelps &  
Phillips, LLP, 1050 Connecticut Avenue NW,  
Washington, D.C., beginning at 9:40 a.m.,  
before Ryan K. Black, a Registered Professional  
Reporter, Certified Livenote Reporter and Notary  
Public in and for the District of Columbia.

Veritext Legal Solutions  
Mid-Atlantic Region  
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Washington, D.C. 20005

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20  
21  
22  
23  
24 ALSO PRESENT

25 Gene Aranov - Legal Videographer

## I N D E X

## TESTIMONY OF: SAHRA PARK-SU PAGE

By Mr. Adams.....14, 207

By Ms. Bailey.....32, 199

## E X H I B I T S

## EXHIBIT DESCRIPTION PAGE

Exhibit 1 a printout of Ms. Park-Su's  
former LinkedIn page.....57

Exhibit 2 a document Bates Numbered 2630..71

Exhibit 3 an e-mail from Secretary Ross  
to Earl Comstock on August 10th,  
2017.....80

Exhibit 4 an e-mail from Ms. Park-Su to  
Earl Comstock copying others sent  
on August 29th, 2017.....82

Exhibit 5 an e-mail.....87

Exhibit 6 a document Bates Numbered  
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1 THE VIDEOGRAPHER: Good morning.

2 We are going on the record at 9:40  
3 a.m. on October 25th, 2018. Please note that  
4 the microphones are sensitive and may pick up  
5 whispering, private conversations and cellular  
6 interference. Please turn off all cell phones,  
7 or place them away from the microphones, as they  
8 can interfere with the deposition audio. Audio  
9 and video recording will continue to take place  
10 unless all parties agree to go off the record.

11 This is Media Unit 1 of the  
12 video-recorded deposition of Sahra Park-Su taken  
13 by counsel for plaintiff in the matter of the  
14 City of San Jose, et al., versus Wilbur M.  
15 Ross, Jr., et al., filed in the United States  
16 District Court for the Northern District of  
17 California, San Francisco Division, Case Number  
18 3:18-cv-2279-RS.

19 This deposition is being held at  
20 Manatt Phelps & Phillips, located at 1050  
21 Connecticut Avenue Northwest, Suite 600,  
22 Washington, D.C.

23 My name is Gene Aranov, from the  
24 firm Veritext Legal Solutions, and I'm the  
25 videographer. The court reporter is Ryan Black,

1 from the firm of Veritext Legal Solutions.

2 I'm not authorized to administer  
3 an oath, I'm not related to any party in this  
4 action, nor am I financially interested in the  
5 outcome.

6 Counsel and all present in the room,  
7 and everyone attending remotely, will now state  
8 their appearances and affiliations for the  
9 record. If there are any objections to  
10 proceeding, please state them at the time of  
11 your appearance, beginning with the noticing  
12 attorney.

13 MR. ADAMS: Good morning. This is  
14 Rory Adams. I represent Plaintiffs City of  
15 San Jose and the Black Alliance for Just  
16 Immigration.

17 MS. SHAH: Hi. My name is Niyati  
18 Shah. I represent the plaintiffs in Lupe,  
19 et al., versus Ross, et al., Case Number  
20 8:18-01570, in the District of Maryland.

21 MR. RAINES: Hi. My name is Chase  
22 Raines. I represent the NYIC plaintiffs in  
23 2:18-cv-5025, which is now consolidated with  
24 2921 in the Southern District of New York.

25 MR. GRANT: My name is Dan Grant,

1 from Covington & Burling. I represent the  
2 plaintiffs in Kravitz v. Department of  
3 Commerce, et al., in the District of Maryland.

4 MS. HELLER: My name is Megan Heller.  
5 I'm agency counsel for the Department of  
6 Commerce.

7 MS. BAILEY: My name is Kate Bailey.  
8 I'm with the Department of Justice, representing  
9 defendants in this matter.

10 THE VIDEOGRAPHER: Anybody on the  
11 phone?

12 MS. BOUTIN: Yes. This is Gabrielle  
13 Boutin --

14 MR. HOLTZMAN: David Holtzman --

15 MS. BOUTIN: -- rep --

16 MR. HOLTZMAN: Go ahead, please.

17 MS. BOUTIN: Thank you.

18 This is Gabrielle Boutin, representing  
19 the State of California in the State of  
20 California v. Roth.

21 MR. HOLTZMAN: This is David Holtzman  
22 of Holland & Knight, representing the County of  
23 Los Angeles.

24 MR. YEOMANS: Keith Yeomans,  
25 representing Los Angeles Unified School District

1 in California v. Ross.

2 THE VIDEOGRAPHER: Is that everyone?

3 MR. ADAMS: Is anyone else on the  
4 line?

5 THE VIDEOGRAPHER: Will the court  
6 reporter please swear in the witness?

7 \* \* \*

8 Whereupon --

9 SAHRA PARK-SU,  
10 called to testify, having been first duly sworn  
11 or affirmed, was examined and testified as  
12 follows:

13 EXAMINATION

14 BY MR. ADAMS:

15 Q. Good morning. We met briefly in  
16 the hall. I'm Rory Adams, and I represent the  
17 City of San Jose and the Black Alliance for Just  
18 Immigration.

19 Ms. Park-Su, have you ever been  
20 deposed before?

21 A. No.

22 Q. Have you ever provided testimony in  
23 court before?

24 A. No.

25 Q. I'd like to go over in some basic

1           A.    My understanding at the time was  
2           that if there are any issues that I was familiar  
3           with, that I had expertise in, that I would have  
4           an opportunity to review it and provide any  
5           comment, input or suggestions.

6           Q.    Has your understanding of that role  
7           changed?

8           A.    Yes.

9           Q.    In what ways?

10          A.    I was assisting with Census, and I  
11          don't think that title necessarily applied to my  
12          role regards to Census. It did, however, with  
13          regards to the International Trade  
14          Administration.

15          Q.    When did you start working at the  
16          Department of Commerce?

17          A.    I believe it was the end of June,  
18          early July of 2017.

19          Q.    And when you started working at the  
20          Department of Commerce, did you have the title  
21          senior policy adviser?

22          A.    Yes.

23          Q.    Have you had any other titles while at  
24          the Department of Commerce?

25          A.    Currently, I have a different title.

1 Q. What is that?

2 A. Senior counselor.

3 Q. Have you had any other titles, other  
4 than senior policy adviser and senior counselor  
5 at the Department of Commerce?

6 A. No.

7 Q. Who did you report to at the  
8 Department of Commerce when you first joined?

9 A. When I first joined, I was working  
10 most closely with Israel Hernandez.

11 MS. BAILEY: Counsel, can we specify  
12 that -- are these directed to this current  
13 tenure at the Department of Commerce versus the  
14 previous tenure?

15 MR. ADAMS: Yes. This is directed  
16 to the current tenure at the Department of  
17 Commerce.

18 THE WITNESS: Okay. Yes. Thank you.  
19 Israel Hernandez.

20 BY MR. ADAMS:

21 Q. What were your -- what were your job  
22 responsibilities while you were reporting to  
23 Mr. Hernandez?

24 A. Sure. It was assisting Izzy with both  
25 any International Trade Administration matters,

1 as well as helping to pull together materials  
2 that Census was sending over to the Department  
3 of Commerce.

4 Q. How long was -- how long did you  
5 report to Mr. Hernandez?

6 A. Until his departure.

7 Q. When was that?

8 A. December of 2017.

9 Q. Who do you report to -- who did you  
10 report to after December of 2017?

11 A. It was sort of split. I was assisting  
12 Karen Dunn Kelly, the Undersecretary for ESA,  
13 and I still, technically, was reporting  
14 to Earl Comstock since they had placed me in  
15 his organization.

16 Q. What was his organization?

17 A. The Office of Policy and Strategic  
18 Planning.

19 Q. When did you become a senior  
20 counselor?

21 A. Probably almost three months ago.

22 Q. So when you started reporting to  
23 Secretary Kelly and Mr. Comstock, you were still  
24 a senior policy adviser?

25 A. Correct.

1 Q. Would you do anything else?

2 A. If I had questions, I'd ask them to  
3 clarify.

4 Q. Anything else?

5 A. No.

6 Q. So you would not, for example, edit  
7 draft responses?

8 A. If there are grammatical suggestions,  
9 I'd make those, but, substance-wise, we would  
10 keep it consistent with what Census had told us.

11 Q. Do you recall ever making substantive  
12 revisions to responses to QFRs?

13 A. There was one.

14 Q. What was that?

15 A. I believe that was asking what the  
16 process was.

17 Q. The process for what?

18 A. For adding a question to the Decennial  
19 Census.

20 Q. Do you recall when that question came  
21 in -- when did you first see that question?

22 A. I can't remember when I first saw  
23 that question. The Office was handling three  
24 Questions For The Record that were sent to us  
25 simultaneously.



1       them properly revise that answer that they had  
2       provided to the QFR.

3               Mind you, things were very busy  
4       at this time, and it still is. Days, if not  
5       maybe a week or so had gone by, and it had  
6       occurred to me that Census had not provided  
7       an updated response, probably because they were  
8       just crashing. And so, at the time, I remember  
9       we had just finished a call with Census, I think  
10      it was one of our weekly meetings with Census,  
11      but for some reason we didn't have it at  
12      Commerce. So what we sometimes will do is  
13      we'll do a call-in in lieu of an actual physical  
14      meeting.

15             After the call-in meeting, I believe  
16      I had a paper copy of that particular question  
17      that I was going to ask Census to help revise,  
18      to ask them where it was. Unfortunately, I had  
19      forgotten to ask them on that call, and, when it  
20      ended, I was in Mike Walsh's office, our Deputy  
21      General Counsel. Our Deputy General Counsel was  
22      also at -- present at that meeting where we had  
23      asked Census to specify what the process was.  
24      And I had asked the Deputy General Counsel,  
25      could you put the together a draft response from

1 your understanding of what Census had told us so  
2 I can send this to Census and see whether they  
3 accept, reject, edit or accept so I can get the  
4 ball rolling, because we need to finalize the  
5 QFRs.

6 Q. Did Mr. Walsh provide you with a draft  
7 response to that question?

8 A. He did.

9 Q. What did you do with his draft  
10 response?

11 A. I typed it and sent it to Census for  
12 their comments and approval or any suggestions.

13 Q. Did Census provide comments, approval  
14 or suggestions?

15 A. Census did respond.

16 Q. What was their response?

17 A. They were okay with the Deputy General  
18 Counsel's draft response.

19 Q. How was that communicated to you?

20 A. By e-mail.

21 Q. And what did you do after receiving  
22 that communication with respect to the response  
23 to the question?

24 A. I then took that response and put it  
25 into the QFR.

1 administrative related to Secretary Kelly's  
2 calendar?

3 A. Right.

4 Q. Did you do any other work that was  
5 not administrative and not related to Secretary  
6 Kelly's calendar?

7 MS. BAILEY: Objection; vague.

8 THE WITNESS: Could you give me an  
9 example?

10 BY MR. ADAMS:

11 Q. No.

12 A. Okay. Well, we did more than just  
13 scheduling. We would, oftentimes, look at  
14 a document and if there are any additional  
15 information that need -- was needed we would  
16 ask bureaus for more information. But, again,  
17 neither Aaron or I, to my knowledge, were Census  
18 experts, so we would rely on Census to give us  
19 as much information as possible.

20 Q. Why do you say that you're not a  
21 Census expert?

22 A. Because I'm not.

23 Q. Have you tried to -- strike that.

24 When you provide information to others  
25 within the Department of Commerce related to the

1 Census, do you create independent work product  
2 without the input of experts from Census?

3 MS. BAILEY: Objection; vague.

4 THE WITNESS: I do not create my own  
5 work product without Census's input.

6 BY MR. ADAMS:

7 Q. If you're providing information  
8 to others related to the Census, would the  
9 information that you provide come from experts  
10 at Census?

11 A. They would come from people at Census.

12 Q. Any other sources?

13 A. Public sources, like the internet.

14 Q. That you would look up?

15 A. Mm-hmm.

16 Q. Any other sources?

17 A. Those sources were, actually, all  
18 directed towards Census's website.

19 Q. So aside from direct input from  
20 experts at Census and publicly available  
21 information on the internet, did you use any  
22 other sources to gather and provide information  
23 to others at Commerce about the Census?

24 MS. BAILEY: Objection; form.

25 THE WITNESS: Could you rephrase that

1 testimony.

2 THE WITNESS: I don't believe so.  
3 One thing I want to clarify, Rory, is that any  
4 document that is provided or created by me is  
5 done, primarily, with input from Census. And  
6 when those documents are created, they're always  
7 ran through Census. I try to make sure that  
8 Census sees it so that if there's anything  
9 that's incorrect or mischaracterized that they  
10 can then make that correction, and I would not,  
11 typically, move forward without Census's final  
12 say.

13 BY MR. ADAMS:

14 Q. Would you move forward without  
15 Census's final say under any circumstances?

16 MS. BAILEY: Objection; vague.

17 THE WITNESS: I don't know what that  
18 means.

19 BY MR. ADAMS:

20 Q. I believe you just testified you would  
21 not move forward without Census's input.

22 A. Typically.

23 Q. Typically.

24 So are there circumstances when you  
25 would move forward without Census's input?

1                   A.    I would try not to.   That would be --  
2                   that would be foolish since I'm not an expert.

3                   Q.    Do you recall any instances where that  
4                   may have occurred?

5                   A.    I do not recall an instance.

6                   Q.    Okay.  When did you first do work at  
7                   the Department of Commerce during your current  
8                   tenure with respect to the 2020 Census?

9                   A.    Gosh.  Probably around the time when I  
10                  first started back at Commerce.

11                  Q.    Which was the summer of 2017?

12                  A.    2017.

13                  Q.    Did someone give you assignments  
14                  related to the Census?

15                  A.    No.

16                         MS. BAILEY:  Objection; vague.

17                         THE WITNESS:  It was, specifically,  
18                  just asking for help.

19                  BY MR. ADAMS:

20                  Q.    Who asked you for help?

21                  A.    Israel Hernandez.

22                  Q.    What did he ask you to do?

23                  A.    Sure.

24                         I think around that time Director  
25                  Thompson had resigned not too long ago, and

1 Q. My question was inexact. I'll  
2 rephrase.

3 A. Sorry. That's a Census administrative  
4 record.

5 Q. No. No. I get it. I -- no -- no  
6 problem. I -- I can ask the question a better  
7 way.

8 You've worked in -- in government  
9 agencies for a number of years, and what I'm  
10 talking about is the administrative record that  
11 underlies agency decisions.

12 A. Mm-hmm. Okay.

13 Q. What is an administrative record in  
14 that sense?

15 A. My understanding is -- is that it's a  
16 compilation of information that is used to make  
17 a decision.

18 Q. What's included within an -- an  
19 administrative record?

20 MS. BAILEY: Objection. Calls for a  
21 legal conclusion.

22 THE WITNESS: I have no idea. What  
23 -- could you --

24 BY MR. ADAMS:

25 Q. Have you ever been tasked with

1 assembling an administrative record?

2 A. No, but I've assisted.

3 Q. How have you assisted in assembling  
4 an -- an administrative record?

5 A. I've assisted when I was in the Import  
6 Administration, where we administer Trade Remedy  
7 laws, the Antidumping and Countervailing Duty  
8 laws. And, as you can imagine, there are a lot  
9 of cases that are filed. And so anytime you  
10 have an outside party that comes in with regards  
11 to a pending case, we would have to then record  
12 those conversations and put them on the record  
13 and include that in Commerce's deliberation in  
14 making determination on a ADCDV case.

15 And so when those happen, I remembered  
16 the teams would put together the information,  
17 which would then come to my front office, which  
18 I would make sure it had everything it needed  
19 prior to going to the assistant secretary for  
20 review and meeting with the team.

21 Q. And that was -- that was be -- that  
22 was before your current tenure at the Department  
23 of Commerce?

24 A. That was in 2007.

25 Q. Did you receive any training about



1 assembling administrative records?

2 MS. BAILEY: Objection; vague.

3 THE WITNESS: Training?

4 BY MR. ADAMS:

5 Q. Training.

6 A. There's training?

7 Q. I'm asking did you receive any?

8 A. Not that I know of.

9 MS. BAILEY: Same objection.

10 THE WITNESS: Not that I'm aware of.

11 If there's official training, I did not receive  
12 official training.

13 BY MR. ADAMS:

14 Q. Did you receive unofficial training?

15 A. What do you mean unofficial training,  
16 on the job?

17 Q. Yes.

18 A. The work that I described in Import  
19 Administration is probably the closest to  
20 compiling information.

21 Q. Did anyone ever explain to you what  
22 types of information should or should not be  
23 included within an administrative record?

24 A. No.

25 Q. Have you ever assembled an

1 administrative record at the Department  
2 of Commerce?

3 A. I had assembled -- helped assemble  
4 the Secretary's deliberation in considering the  
5 citizenship question.

6 MR. ADAMS: I'd like to show you  
7 Exhibit Number 13.

8 (Deposition Exhibit No. 13, a document  
9 Bates Numbered 1984, was marked.)

10 BY MR. ADAMS:

11 Q. This is Bates Number 1984.

12 The second e-mail in this chain is  
13 dated January 28th, 2018, from James Uthmeier.

14 A. Mm-hmm.

15 Q. And he says, additionally, I know that  
16 KDK, --

17 That's Secretary Kelly?

18 A. Karen Dunn Kelly, yes.

19 Q. -- wanted to do a follow-up meeting  
20 to tomorrow's Steering Committee -- steering  
21 meeting, --

22 A. Mm-hmm.

23 Q. -- at which we could visit directly  
24 with Ron and Enrique about the admin record.

25 And you responded, also, I spoke with

1 about this document?

2 Q. In -- in the latter half of January  
3 2018.

4 A. Possibly. I don't know.

5 Q. Did you attend any meeting where this  
6 document was discussed?

7 A. Not that I can recollect.

8 Q. Did you attend any meeting where  
9 Options A, B and C were discussed?

10 THE WITNESS: I'm sorry. Just to  
11 clarify, discussed this with Karen Dunn Kelly or  
12 with Census?

13 BY MR. ADAMS:

14 Q. With anyone within the Department of  
15 Commerce or the Census Bureau.

16 A. Around this time in late January, I  
17 don't -- I don't recall.

18 Q. Do you recall the Department of  
19 Commerce coming up with a set of 35 questions  
20 for the Census Bureau?

21 A. I don't know if there are 35  
22 questions. I know that Commerce did come up  
23 with a list of questions based off of this  
24 options paper that was provided by Census.

25 Q. How did Commerce come up with those

1 questions?

2 A. So Commerce was given a copy of this  
3 document, the options paper, and it was shared  
4 with some of us at Commerce. And I believe  
5 after reviewing it there's some folks that came  
6 back with questions. And so there was an effort  
7 to compile those questions because different  
8 people had different questions.

9 Q. Do you recall who had questions?

10 A. I believe David Langdon, I think James  
11 Uthmeier may have, and I think Earl may have, as  
12 well. I don't know if there would be more or --  
13 or less.

14 Q. Karen Dunn Kelly, --

15 A. Mm-hmm.

16 Q. -- did -- did she have questions, that  
17 you recall?

18 A. I don't know. I can't remember.  
19 Somebody was collecting everybody's questions,  
20 so she may or may not have. But I wasn't  
21 compiling everybody's questions, so I don't  
22 know.

23 MR. ADAMS: I'm showing you what's  
24 been marked as Exhibit 16. This is Bates Number  
25 3706.

1 (Deposition Exhibit No. 16, a document  
2 Bates Numbered 3706, was marked.)

3 THE WITNESS: Mm-hmm. Okay.

4 BY MR. ADAMS:

5 Q. Does this refresh your recollection  
6 as to whether Secretary Kelly may have had  
7 questions?

8 A. I do not know.

9 Just to clarify, I don't know if  
10 they're Karen's questions or if they're a  
11 compilation of questions, but it sounds like  
12 I had a copy of some questions -- her copy at my  
13 desk.

14 Q. At some point were the que -- were the  
15 questions transmitted to the Census Bureau?

16 A. I don't know. I'd imagine they were,  
17 because Census provided responses.

18 Q. But you did not transmit them?

19 A. I did not transmit those questions.

20 Q. Did you receive responses to the  
21 questions --

22 A. I think --

23 Q. -- from Census?

24 A. -- I may have seen a copy of them.  
25 I don't know if I was on an e-mail. I can't

1 recall.

2 Q. The administrative record reflects  
3 multiple versions of these questions. What do  
4 you recall about the process of preparing a  
5 final set of responses?

6 MS. BAILEY: Objection; foundation.

7 THE WITNESS: All I know was a final  
8 copy was given to me to keep for record's sake,  
9 and that's all I know.

10 MR. ADAMS: I'd like to show you  
11 what's been marked as Exhibit 17.

12 (Deposition Exhibit No. 17,  
13 Defendant's Objections and Responses to  
14 Plaintiff's Third Set of Interrogatories in the  
15 New York Action, Case No. 18-2025, was marked.)

16 BY MR. ADAMS:

17 Q. Exhibit 17 is Defendant's Objections  
18 and Responses to Plaintiff's Third Set of  
19 Interrogatories in the New York -- in the  
20 related New York action, Case Number 18-5025.  
21 I'd like to direct your attention to Page 2 of  
22 the document.

23 A. Mm-hmm.

24 Q. And at the bottom of the page  
25 is Interrogatory Number 5. With regard to

1 draft and final response to Question 31 in the  
2 questions on the January 19th draft census memo  
3 on the DOJ Citizenship Reinstatement Request,  
4 found at Administrative Record 2303 to 2304 and  
5 Administrative Record 196, please identify, A,  
6 all persons who worked on any draft of the  
7 response.

8 A. Mm-hmm.

9 Q. And in response the Department of  
10 Commerce responded with a list of names, among  
11 others, yours, correct?

12 A. Mm-hmm. Yes.

13 Q. In what ways did you work on a  
14 draft of the response to Question 31, and I  
15 can -- would it help to show you Question 31?

16 A. Sure. That would be helpful. I think  
17 it's in reference to what we spoke about  
18 earlier, --

19 Q. It is.

20 A. -- but I'd love to see a copy.

21 MR. ADAMS: Sure. So what I'm marking  
22 as Exhibit Number 18 is Bates Number 1286 from  
23 the administrative record.

24 (Deposition Exhibit No. 18, a document  
25 Bates Numbered 1286, was marked.)

1 BY MR. ADAMS:

2 Q. And Question 31 appears on Page 11.

3 A. Mm-hmm.

4 Q. What is the process that was used  
5 in the past to get questions added to the  
6 Decennial Census, or do we have something  
7 similar where a precedent was established?

8 A. Mm-hmm.

9 Q. And as we saw in Exhibit 17, the  
10 Department of Commerce responded with your name  
11 when asked for all people who worked on any  
12 draft of the response.

13 A. Yep.

14 Q. And what work did you do on a draft of  
15 re -- of the response to this question?

16 A. Yes. It goes back to what I mentioned  
17 earlier. Census, based off of our understanding  
18 of our meetings with them, had indicated that  
19 there was a distinction between the process  
20 that's used at questions to the American  
21 Community Survey, which they had shared with  
22 us, and that the Decennial Census did not  
23 necessarily have a similar process, to their  
24 knowledge, that they could point to.

25 And, therefore, it would not be an accurate



1 characterization to say that it was the same.

2 And so based off of that, Census was  
3 to go about -- my understanding from the meeting  
4 was that Census was going to go back and work on  
5 the draft response to Question 31.

6 Now, as I mentioned, these were  
7 extremely busy times. And I think a few days,  
8 if not a week or so had gone by, and this was  
9 not updated. And I was in a meeting with Mike  
10 Walsh, we had a call with Census in lieu of an  
11 in-person meeting that we typically have, and  
12 had a hard copy of this and had asked Mike  
13 Walsh, our Deputy General Counsel, based off  
14 of his recollection of our meeting with Census,  
15 could he draft together a draft response so that  
16 I can send it to Census for clearance, comments  
17 or edits so I could get the ball rolling so we  
18 can finalize these answers.

19 Mike Walsh then handwrote the draft  
20 response for me on my paper, which then I then  
21 went back and typed it up and sent it to Census.  
22 I sent it to -- by e-mail to Ron Jarmin, I  
23 believe Enrique Lamas, Christa, which those are,  
24 typically, the people that I'll e-mail asking  
25 for their comments, suggestions or clearance on

1 this.

2 And that was my involvement regarding  
3 this question and answer.

4 Q. When was -- so Census sent a draft  
5 response to Question 31 to Commerce?

6 A. Mm-hmm.

7 Q. And you asked at some point for a  
8 revision to that response?

9 A. I don't recall myself asking. I  
10 remember at the meeting the understanding was  
11 Census was going to go back, because I don't  
12 believe this was the only one where they were  
13 going to revisit. This was one of some that  
14 Census was supposed to come back with their  
15 revision.

16 Q. Do you recall when Census was first  
17 asked to revisit their initial response to  
18 Question 31?

19 A. I don't. I would imagine it  
20 probably wasn't too long after they provided  
21 this response, and it was probably during the  
22 course of one of our subsequent meetings with  
23 them, either weekly or biweekly, or even a phone  
24 conversation -- no, it was an in-person meeting.  
25 Excuse me.

1 to prepare the questions to send up to Congress.

2 Q. Did Mike Walsh draft revised responses  
3 to any questions, other than Question 31?

4 A. Not that I'm aware of.

5 Q. In terms of timing, would you agree  
6 that Census provided initial responses to most  
7 of the 35 questions by the beginning of February  
8 2018?

9 A. Likely. Census tries to turn around  
10 information as quickly as they can.

11 But as you can see from Question 30,  
12 there's a lot of back and forth where Census  
13 would come back and ask, we're not sure what  
14 you're asking for, please clarify the question.

15 MR. ADAMS: I'd like to show you  
16 what's been marked as Exhibit Number 19.

17 (Deposition Exhibit No. 19, a document  
18 Bates Numbered 1616, was marked.)

19 BY MR. ADAMS:

20 Q. This is Bates Number 1616, and I'd  
21 like to turn to Question Number 31.

22 A. Mm-hmm.

23 Q. And if you could review the response  
24 to Question 31 and let me know when you've had a  
25 chance to look at it.

1 A. Mm-hmm.

2 Okay.

3 Q. Does this -- does this look to you  
4 like the initial response that Commerce received  
5 from the Department of Census to Question 31?

6 MS. BAILEY: Objection; vague.

7 THE WITNESS: Question to 31? Could  
8 you --

9 MR. ADAMS: Could you repeat the  
10 question?

11 THE REPORTER: The last question, or  
12 the one prior?

13 MR. ADAMS: The last question.

14 (Referred-to testimony read back.)

15 MS. BAILEY: Same objection.

16 THE WITNESS: It looks similar, but  
17 I cannot tell you if this is exactly what it  
18 looked like word for word.

19 BY MR. ADAMS:

20 Q. This is not the response that  
21 Mr. Walsh drafted?

22 A. That's correct.

23 Q. The re -- the response says  
24 that adding a question or making a change to  
25 the Decennial Census toward the ACS involves

1 extensive testing, review and evaluation.

2 Did you have any reason to believe  
3 that that statement was inaccurate in this  
4 response?

5 A. Yes. My understanding from the  
6 meetings that we had from Census was that  
7 this statement was very true for the American  
8 Community Survey, and I believe when we  
9 had asked about the Decennial Census, my  
10 understanding was that Census said it had been a  
11 very long time since they have added a question,  
12 to which I believe there was an effort that was  
13 made by Census to see if they could find the  
14 last time a question was added to the Decennial  
15 and, when it was added, what process, any  
16 historical record that Census could show us  
17 to support that statement. And Census, to my  
18 recollection, did not have anything to provide.

19 Q. What prompted the Department of  
20 Commerce to dig deeper into this initial  
21 response to Question 31?

22 MS. BAILEY: Objection; foundation.  
23 Mischaracterizes previous testimony.

24 THE WITNESS: Could you repeat  
25 that question or miss -- rephrase it for me.

1 in connection with considering the process  
2 for adding a question to the 2020 Census?

3 A. Not to my recollection. This looks  
4 like this was in preparation for the PMR, the  
5 quarterly Performance Management Review that  
6 Census hosts to provide the public an update on  
7 the progress that they've made in preparation  
8 for the Decennial. And I think this may be  
9 one of those public presentations that Census  
10 provided.

11 It says here that they were including  
12 a slide to send to Ellen Johnson, who is a  
13 staffer in the House Oversight and Government  
14 Reform Committee, who I guess she might have  
15 inquired about that.

16 Q. That's HOCR?

17 A. Mm-hmm.

18 MR. ADAMS: I'd like to show you what  
19 I've marked as Exhibit 21. It's Bates Number  
20 13023.

21 (Deposition Exhibit No. 21, a document  
22 Bates Numbered 13023, was marked.)

23 THE WITNESS: Mm-hmm.

24 BY MR. ADAMS:

25 Q. And this is an e-mail from you on

1 February 23rd, 2018, to Ron, Enrique and  
2 Christa at the Census Bureau, correct?

3 A. Correct.

4 Q. And you would agree that the bolded  
5 question that appears beneath your name is  
6 Question 31?

7 A. Mm-hmm. Yes.

8 Q. Are you familiar with this draft  
9 response to Question 31?

10 A. I believe this is Mike Walsh's draft  
11 response that I typed and sent to Census asking  
12 for their thoughts.

13 Q. When you say the -- Mike Walsh wrote  
14 an answer, --

15 A. Mm-hmm.

16 Q. -- I believe you said that he wrote  
17 it on a hard copy document that you had of the  
18 questions?

19 A. He wrote it for me because I had a  
20 hard copy and I asked him on the spot after we  
21 had concluded a call with Census.

22 Q. Did you -- strike that.

23 Who came up with the language that he  
24 wrote down?

25 A. I believe it was based off of

1 his understanding from the meeting that he  
2 participated in with Census when they went over,  
3 among many things, what the process was for the  
4 Decennial Census where Census clarified to us.

5 Q. Did you make suggestions for the  
6 language to be used in the revised version of  
7 the response to Question 31?

8 A. Could you rephrase that?

9 Q. The -- the version of -- the revision  
10 of the response to Question 31 that Mr. Walsh  
11 wrote on your hard copy, --

12 A. Mm-hmm.

13 Q. -- did you provide suggestions as to  
14 what wording should be used for that response?

15 A. No. I typed it verbatim.

16 Q. And Mr. Walsh came up with the  
17 language independently?

18 A. No. It was based off of his  
19 understanding from the meeting he had  
20 participated in with Census, that we had all  
21 participated in.

22 Q. Let me rephrase -- ask a different  
23 question.

24 A. Okay.

25 Q. He came up with the -- is it correct



1 to say that he came up with the language  
2 independent of substantive input from you?

3 MS. BAILEY: Objection; form.  
4 Objection. Mischaracterizes previous testimony.

5 THE WITNESS: I did not provide any  
6 input with regards to the response to Question  
7 Number 31.

8 BY MR. ADAMS:

9 Q. Part of this response in your e-mail  
10 says, consistent with longstanding practice  
11 for adding new questions to the ACS survey,  
12 the Census Bureau is working with relevant  
13 stakeholders to ensure that legal and regulatory  
14 requirements are fulfilled and that the  
15 questions would produce quality, useful  
16 information for the nation.

17 A. Mm-hmm.

18 Q. Who provided the information used  
19 to come up with that language to Mr. Walsh?

20 MS. BAILEY: Objection; form.

21 THE WITNESS: I believe this language  
22 was based off of Census's explanation to us  
23 about the process for the American Community  
24 Survey.

25 BY MR. ADAMS:

1       aware, that process is ongoing. I think "as  
2       upon its conclusion" probably should have been  
3       a separate paragraph and it should have been  
4       clarified that "upon its conclusion of looking  
5       at the Department of Justice request with  
6       regards to Decennial Census", that it's still  
7       ongoing and that the information would be  
8       provided to the Secretary for consideration.  
9       But, again, I wrote this based upon what was  
10      given to me --

11           Q.     Typing --

12           A.     -- without any corrections. Right.

13           Q.     Typing up verbatim what you received  
14      from Mr. Walsh?

15           A.     Correct.

16           Q.     Christa Jones responded to you and  
17      said, Sahra, I'm fine with this. This is not  
18      to say that there weren't some improvements and  
19      presentation changes for the topics between  
20      1990, 2000, 2010 and planned for 2020. I just  
21      want us all to be clear that the questionnaires  
22      were not -- was not identical from 1990 to now.

23           A.     Mm-hmm.

24           Q.     Aside from this response from  
25      Ms. Jones, did you receive any other responses

1 or feedback from Mr. Jarmin, Mr. Lamas or  
2 Ms. Jones about this proposed response?

3 A. No. And the reason why Christa is  
4 always copied on any e-mail to Ron and Enrique  
5 is so that she can also ping them and check with  
6 them in the event that they missed an e-mail  
7 from us.

8 And so Christa was my liaison  
9 over there to ensure that we could get a timely  
10 response from Census, and, if she responded,  
11 then that was good as -- as what census was  
12 going forward with, so that was my  
13 understanding.

14 Q. So your understanding -- was it  
15 your understanding that Census had reviewed and  
16 approved of the language that Mr. Walsh wrote on  
17 your hard copy and you retyped here?

18 A. That's what I took it as.

19 Q. Following -- following this exchange,  
20 did Commerce send to you any other revisions to  
21 a response to Question 31?

22 A. No, not that I can recall.

23 Q. Can you recall -- do you know whether  
24 they -- whether Census sent anyone within the  
25 Department of Commerce a further revision of the

1 response to Question 31?

2 A. I do not know. As far as I was  
3 concerned, this was done and over and we can  
4 move on.

5 Q. From your perspective, you said it's  
6 done and over and we can move on, so you view  
7 this language as having been approved final  
8 language for the response to Question 31?

9 A. With regards to Census's review, that  
10 was my understanding.

11 Q. Was there further review of the  
12 response within the Department of Commerce?

13 A. I do not know. At this point there  
14 are a lot of e-mails going back and forth,  
15 so ...

16 MR. ADAMS: I'd like to show you  
17 what's been marked as Exhibit Number 22, and  
18 this is Bates Number 9812.

19 (Deposition Exhibit No. 22, a document  
20 Bates Numbered 9812, was marked.)

21 MR. ADAMS: Before we go to this  
22 exhibit, I want to go back to what we were just  
23 discussing and show you Exhibit 23.

24 (Deposition Exhibit No. 23, a document  
25 Bates Numbered 3403, was marked.)

1 know if they came in together or if they came in  
2 separately, the attachment.

3 Q. Taking a look at Exhibit 22, --

4 A. Mm-hmm.

5 Q. -- if we could turn to page -- it's  
6 the second-to-last page, --

7 A. Mm-hmm.

8 Q. -- Question 31. So the version of  
9 the response to Question 31 that's in this  
10 document --

11 A. Mm-hmm.

12 Q. -- is not the version that was  
13 prepared by Mike Walsh.

14 A. Correct.

15 Q. Do you know why, as late as March 1st,  
16 2018, Dr. Abowd would be using this version of  
17 the response to Question 31?

18 MS. BAILEY: Objection. Calls for  
19 speculation. Foundation.

20 THE WITNESS: I do not know why,  
21 but this is not the version he should have been  
22 using.

23 BY MR. ADAMS:

24 Q. He should have been using the version  
25 as drafted by Mr. Walsh?

1 A. The one that was cleared by Census.

2 MR. ADAMS: Could we go off the record  
3 for two minutes?

4 THE VIDEOGRAPHER: We're going off the  
5 record. The time is 1:53 p.m.

6 (Brief recess.)

7 THE VIDEOGRAPHER: We're back on the  
8 record. The time is 1:55 p.m.

9 BY MR. ADAMS:

10 Q. I'd like to compare the different  
11 versions of the response to Question 31 that we  
12 have.

13 A. Okay.

14 Q. So there is the version in Exhibit 22,  
15 which is the March 1st, 2018, memo from  
16 Dr. Abowd.

17 A. Okay.

18 Q. There's the version in Exhibit 19.  
19 I think this might be it.

20 A. No, that's 18. You said 19, right?  
21 So Exhibit 19, --

22 Q. Exhibit 19.

23 A. -- and then what was the one before  
24 that that you asked? Oh, and then this one, --

25 Q. And Exhibit --

1 A. -- Exhibit 22?

2 Q. So 18, 19, --

3 A. Nineteen.

4 Q. -- 21 and 22. So we have four -- four  
5 documents.

6 A. Okay. Okay.

7 Q. Starting with 19 and 22, --

8 A. 19 and 22. Okay.

9 Q. Okay.

10 -- would you agree that these versions  
11 of the response to Question 31 are the same?

12 A. I'm sorry. That the response to --

13 Q. Question 31.

14 A. -- 31 for Exhibit 18 --

15 Q. 19 and 22.

16 A. -- 19 -- I'm sorry.

17 Q. I'm sorry.

18 A. I'm sorry. One more time. For 19 and  
19 22, are they the same?

20 Q. Yes.

21 A. Okay. Yes, they read the same.

22 Q. Turning to the version in Exhibit 21,  
23 this is the e-mail version with the typed-up  
24 version of Mr. Walsh's response?

25 A. Mm-hmm. Twenty-one. Okay. Sorry.

1 There's -- okay.

2 Q. This had been communicated to Census  
3 prior to March 1st, 2018, correct?

4 A. Correct.

5 Q. Are you aware of any reason why  
6 Dr. Abowd would not be using this version of the  
7 response to Question 31?

8 MS. BAILEY: Objection. Objection.  
9 Calls for speculation. Objection; foundation.

10 THE WITNESS: I don't know.

11 BY MR. ADAMS:

12 Q. Did -- did Dr. Abowd, to your  
13 knowledge, express to anyone at the Department  
14 of Commerce disagreement with the version of the  
15 response in Exhibit 21?

16 A. You mean the one that the Commerce  
17 Department provided --

18 Q. Yes.

19 A. -- to 21?

20 I don't know. I believe Dr. Abowd  
21 is not in that e-mail that I had sent to Census.  
22 I only had sent it, it seems, to Ron Jarmin,  
23 Enrique Lamas, Christa Jones, Karen Dunn Kelly,  
24 Mike Walsh and Brian Lenihan.

25 Q. Before we compare the version of the



1 response in Exhibit 21 to the version that's in  
2 Exhibit 18, --

3 A. Okay.

4 Q. -- I just want to go back to 21  
5 and make sure I understand what, if anything,  
6 happened to this version of the response after  
7 February 23rd, 2018. Did you make any further  
8 revisions to the response to Question 31?

9 A. No.

10 Q. To your knowledge, did Mr. Walsh  
11 make any further revisions to the response?

12 A. No.

13 Q. To your knowledge, did Secretary Kelly  
14 make any revisions to this version?

15 A. No.

16 Q. Are you aware of anyone who made  
17 revisions to this version of Question 31 after  
18 February 23rd?

19 MS. BAILEY: Objection. Asked and  
20 answered.

21 THE WITNESS: No.

22 BY MR. ADAMS:

23 Q. If we could compare Exhibit 21 with  
24 Exhibit 18, --

25 A. Okay.

1 Q. Okay.

2 -- you would agree that these are not  
3 identical, correct?

4 A. Correct.

5 Q. And the sentence, consistent with  
6 longstanding practice for adding new questions  
7 to the ACS survey, the Census Bureau is working  
8 with relevant stakeholders.

9 MS. BAILEY: Sorry. Can we clarify  
10 which exhibit? I'm sorry.

11 MR. ADAMS: Yes. Exhibit 21.

12 BY MR. ADAMS:

13 Q. There is a sentence in 21, consistent  
14 with longstanding practice for adding new  
15 question -- for adding new questions to the  
16 ACS survey, the Census Bureau is working with  
17 relevant stakeholders to ensure that legal and  
18 regulatory requirements are fulfilled and that  
19 the question would produce quality and useful  
20 information for the nation.

21 A. Mm-hmm.

22 Q. That initial phrase, consistent with  
23 longstanding practice for adding a new question  
24 to the ACS survey, does not appear in the  
25 version of the answer in Exhibit 18, --

1 A. Mm-hmm.

2 Q. -- correct?

3 A. Correct.

4 Q. Do you know why?

5 A. I do not know why. It seems like  
6 it's a truncated version of Exhibit 21. It's  
7 the same answer, just shortened.

8 Q. You testified, and correct me if I'm  
9 wrong, that you're not aware of anyone having  
10 made further revisions to Question 31 as  
11 reflected in Exhibit 21.

12 A. Correct.

13 Q. In terms of control of the -- the  
14 document that had the responses to all of these  
15 questions, I'd imagine it changed hands a number  
16 of times; is that correct?

17 A. Yes. I would imagine.

18 Q. And after February 23rd, people in  
19 addition to you made revisions; is that correct?

20 MS. BAILEY: Objection. Calls for  
21 speculation.

22 THE WITNESS: I don't know. I don't  
23 know.

24 BY MR. ADAMS:

25 Q. How many -- strike that.

1 responses to these questions after February  
2 23rd?

3 MS. BAILEY: Objection.

4 THE WITNESS: The Secretary?

5 MS. BAILEY: Objection. Asked and  
6 answered several times.

7 THE WITNESS: No.

8 BY MR. ADAMS:

9 Q. I've been asking about revisions by  
10 people at the Department of Commerce. Are you  
11 aware of whether anyone within the Census Bureau  
12 revised answers -- the answer to Question 31  
13 after February 23rd, 2018?

14 MS. BAILEY: Objection; foundation.

15 THE WITNESS: No. I don't know.

16 BY MR. ADAMS:

17 Q. Who changed the response to Question  
18 31 from the version reflected in Exhibit 21 to  
19 the version reflected in Exhibit 18?

20 MS. BAILEY: Objection. Calls for  
21 speculation, foundation, asked and answered.

22 THE WITNESS: I don't know.

23 BY MR. ADAMS:

24 Q. Okay. With respect to -- with respect  
25 to the process of considering DOJ's request,

1           A.     That's what it looks like from the  
2 scheduler.

3           Q.     And it lists calls with members of  
4 Congress and others, such as Kay Coles James  
5 with the Heritage Foundation, Christine Pierce,  
6 a demographer at Nielsen. Did these calls take  
7 place?

8           A.     Some did and some didn't. It was  
9 tricky. Like, the scheduling team tried to  
10 squeeze in as many calls during certain hours,  
11 but then they were shifting and changing, and  
12 sometimes the members or people were not  
13 available. So the final list of summaries based  
14 off these stakeholder calls were all the people,  
15 to my recollection, that we -- that the  
16 Secretary was able to get ahold of and have a  
17 listening session.

18          Q.     For each of the calls you participated  
19 in, did you take contemporaneous notes?

20          A.     Yes. I tried.

21                 I think I may have missed a couple  
22 with the members at the tail end, but Kasey was  
23 in those meetings so she would have read the  
24 summaries.

25          Q.     Do you recall whether you were on the

1 phone call with Christine Pierce from Nielsen?

2 A. If my notes show it, maybe.

3 Q. You don't recall either way, though?

4 A. I don't. There were so many. I mean,  
5 that's why we were taking notes.

6 MR. ADAMS: I'd like to show you  
7 what's been marked as Exhibit Number 28.

8 (Deposition Exhibit No. 28, a document  
9 Bates Numbered 001313, was marked.)

10 BY MR. ADAMS:

11 Q. Are you familiar with this document?

12 A. I believe it was the Secretary's  
13 decision.

14 Q. Who drafted the Secretary's decision?

15 A. Boy, I don't know, but it wasn't me.

16 Q. Did you work on preparing any inputs  
17 into this decision?

18 MS. BAILEY: Objection; vague.

19 THE WITNESS: Inputs? No.

20 BY MR. ADAMS:

21 Q. Did you provide any information  
22 -- strike that.

23 Did you have any role in the creation  
24 of this document, in particular?

25 A. No. I think I saw the final finished

1 product.

2 Q. As this was being drafted, did  
3 anyone ask you any questions about formulations  
4 -- strike that.

5 As this was being drafted, did  
6 anyone ask you questions about preparing the  
7 Secretary's final decision?

8 MS. BAILEY: Objection; vague.

9 THE WITNESS: Preparing his final  
10 decision for ...

11 BY MR. ADAMS:

12 Q. Preparing this document.

13 A. No.

14 Q. If you could turn to Page 6 -- oh,  
15 that has my underline in it.

16 A. Is this your copy?

17 Q. That's all right.

18 A. Okay.

19 Q. So what I have underlined is the  
20 sentence, first, several stakeholders who  
21 opposed reinstatement of the citizenship  
22 question did not appreciate that the question  
23 had been asked in some form or another for  
24 nearly 200 years.

25 A. Mm-hmm.

1 Q. Do you recall -- do you recall  
2 stakeholder phone calls where stakeholders  
3 expressed opposition to the reinstatement of  
4 the citizenship question?

5 A. The stakeholders, I think they were --  
6 they were folks who were not fans of the  
7 request.

8 Q. And do you recall, based on those  
9 phone calls, whether stakeholders who were  
10 opposed appreciated that the question had been  
11 asked in some form or another for nearly 200  
12 years?

13 MS. BAILEY: Objection; vague.

14 THE WITNESS: I don't know. I'd have  
15 to go back and look at those notes.

16 BY MR. ADAMS:

17 Q. Without looking at those notes, would  
18 you be able to say what the source of this  
19 statement is?

20 A. I do not.

21 MR. ADAMS: If we could take a  
22 10-minute break, I think we're approaching the  
23 end. So why don't we take a 10-minute break and  
24 come back?

25 THE VIDEOGRAPHER: We're going off the



1 answer on your hard copy?

2 A. I don't remember when, but I'd imagine  
3 once he provided edits, typically, I would try  
4 to send it back as soon as possible, but I don't  
5 know when.

6 Q. Do you know the date of the meeting  
7 -- do you know the date of the meeting where  
8 Mr. Walsh received what information he needed  
9 to receive to draft that response?

10 A. I don't recall the date of the  
11 meeting, but I remember it was the same briefing  
12 that I had participated in, and it was the  
13 bigger group meeting with Census, but I don't  
14 remember which one. We had a lot of them.

15 (Deposition Exhibit No. 29, a  
16 certification by Ms. Park-Su, was marked.)

17 BY MR. ADAMS:

18 Q. Okay. Earlier we spoke about  
19 -- generally, about administrative records,  
20 and I'm going to show you what's been marked as  
21 Exhibit Number 29.

22 A. Mm-hmm.

23 Q. Do you recognize -- do you recognize  
24 this document?

25 A. I do.

1 Q. And is this your signature in the  
2 middle of the document?

3 A. That is my signature.

4 Q. What is this document?

5 A. What do you mean?

6 Q. What do you understand this document  
7 to be?

8 A. I mean it to be what it says on  
9 the paper where it says, I here certify that  
10 the annexed is a true copy of the complete  
11 administrative record upon which the Secretary  
12 of Commerce based his decision to reinstate a  
13 question concerning citizenship on the 2020  
14 Decennial Census. I base this certificate on my  
15 personal involvement with the compilation review  
16 of the documents comprising the administrative  
17 record.

18 Q. How were you personally involved with  
19 the compilation of the documents comprising the  
20 administrative record?

21 A. Yeah. As I told you, I was usually  
22 given final versions, to my understanding, of  
23 documents that were going back and forth, and  
24 it was my responsibility to hold on to those  
25 documents because there was so many paper

1 movements.

2 Q. Was that the extent of your personal  
3 involvement on the compilation of documents?

4 A. I believe I had also looked up  
5 online a history that Census had in one of their  
6 reviews about questions regarding citizenship  
7 that was added. So a lot of the public  
8 historical documents that Census had, I had  
9 gone back to find them online or verify that  
10 they were, in fact, there.

11 Q. When compiling documents comprising  
12 the administrative record, did you affirmatively  
13 reach out to others and ask for documents that  
14 should be included in the record?

15 A. Ask for other documents?

16 Q. Yes.

17 A. Besides what we had from Census?

18 Q. Yes.

19 A. Not that I recall.

20 Q. Did anyone provide you guidance on  
21 how to compile documents for the administrative  
22 record?

23 A. No. My only under -- understanding  
24 was that I was going to keep the record of all  
25 documents that were handed to me.

1 Q. So just to clarify, aside from  
2 documents that were handed to you, you did  
3 not affirmatively reach out to others within  
4 Commerce --

5 A. No.

6 Q. -- to send you documents for the  
7 record?

8 A. No. I had asked Commerce, though, if  
9 there are any documents that Census had sent to  
10 them that I was not copied on, please send them  
11 to me.

12 Q. So that referred to documents from  
13 Census?

14 A. Right. Just as a precautionary  
15 measure, but I don't believe that -- that they  
16 had.

17 Q. From whom were you receiving documents  
18 that you compiled for the administrative record?

19 A. I think it varied. Oftentimes,  
20 they were given to me when we had our meeting  
21 with Karen Dunn Kelly or with Census. So,  
22 oftentimes, people would hand what I believe  
23 to be a final version of a document. So, for  
24 instance, the Department of Justice letter in  
25 early January was one that a hard copy was given

1 to me to keep, so it varied.

2 Q. Were all documents that you compiled  
3 for the administrative record hard copy  
4 documents?

5 A. Most of them, but not all of them.

6 Q. The documents that were not hard copy  
7 documents, --

8 A. Mm-hmm.

9 Q. -- did you have them saved on your  
10 computer?

11 A. Mm-hmm. I believe so.

12 Q. And from whom did you receive  
13 electronic copies of documents for the  
14 administrative record?

15 MS. BAILEY: Objection; vague.

16 THE WITNESS: I don't know.

17 BY MR. ADAMS:

18 Q. When people provided you with various  
19 documents, did anyone indicate, this is a  
20 document that should be part of the  
21 administrative record?

22 A. No.

23 Q. You decided which documents should  
24 be part of the administrative record?

25 MS. BAILEY: Objection.

1 Mischaracterizes witness's previous testimony.

2 THE WITNESS: No, I would just hold on  
3 to documents that people would give me when it  
4 came to Department of Justice's inquiry.

5 BY MR. ADAMS:

6 Q. Did you consider all documents that  
7 you received related to the Department of  
8 Justice's inquiry to be part of the  
9 administrative record?

10 A. I don't know.

11 MS. BAILEY: Objection; vague.

12 THE WITNESS: Sorry.

13 BY MR. ADAMS:

14 Q. Part of the certification says that  
15 it was based on your personal review of the  
16 documents comprising the administrative record.

17 A. Personal involvement --

18 Q. I base this --

19 A. -- and the compilation and review of  
20 the documents?

21 Q. Yes.

22 A. Mm-hmm.

23 Q. So how did you review the documents  
24 comprising the administrative record?

25 A. Sure.

1 Counsel's office had asked if I would  
2 sign this document that contained information  
3 about the Secretary's decision to consider the  
4 citizenship question, and so it was a massive  
5 electronic file of documents. And I went  
6 through each and every one of them and I  
7 looked at them, and that's what I reviewed.

8 Q. The compilation of documents that you  
9 reviewed, did you create that compilation of  
10 documents?

11 A. I didn't create it. I had -- it was  
12 -- most of them were documents that were given  
13 to me that I had in hard copy.

14 Q. Mm-hmm.

15 A. And it looked like most -- it  
16 looked like counsel's office had scanned them  
17 individually and had saved them, and that was  
18 part of the administrative record.

19 Q. From whom did you receive the  
20 compilation of documents that you reviewed?

21 A. I can't remember. It was from one  
22 of the attorneys in General Counsel's office.

23 Q. Did you select the documents that were  
24 part of that compilation?

25 A. I did not select the documents. I

1 held on to the documents that were given to me.

2 Q. Do you know who selected the documents  
3 that were part of that compilation?

4 A. I do not know.

5 Q. Did anyone ask you which documents  
6 ought to be part of the compilation?

7 A. No.

8 Q. Did you have any say whatsoever in  
9 determining the content of that compilation?

10 A. No.

11 MS. BAILEY: Objection; vague.  
12 Confusing.

13 MR. ADAMS: I'd like to show you  
14 what's been marked as Exhibit Number 30.

15 (Deposition Exhibit No. 30, a document  
16 Bates Numbered 001321, was marked.)

17 THE WITNESS: Okay.

18 BY MR. ADAMS:

19 Q. Are you familiar with this document?

20 A. This is the first time I'm seeing this  
21 document.

22 Q. You've never seen this document  
23 before?

24 A. I have not seen this document.

25 Q. To your knowledge, have you seen any



1 MR. RAINES: No.

2 MS. BAILEY: Okay. I have a couple of  
3 redirect questions, please.

4 MR. RAINES: No.

5 EXAMINATION

6 BY MS. BAILEY:

7 Q. You spoke earlier about Exhibit 29, --

8 A. Mm-hmm.

9 Q. -- which is the certification to the  
10 admini -- administrative record produced in this  
11 litigation?

12 A. Yes.

13 Q. I think you testified that this  
14 -- that the designation of documents compiled  
15 was given to you by the Office of General  
16 Counsel; is that correct?

17 A. Correct.

18 Q. Okay. And is it your understanding  
19 that attorneys within the Office of General  
20 Counsel worked on compiling that designation?

21 A. Yes.

22 Q. Have you worked on -- have you  
23 certified an administrative record in other  
24 litigation?

25 A. No.

1 Q. And did you familiarize yourself with  
2 the documents selected before certifying the  
3 record?

4 A. I looked at the documents at the  
5 General Counsel's Office provided prior to  
6 signing.

7 MS. BAILEY: Thank you. That's all I  
8 have.

9 FURTHER EXAMINATION

10 BY MR. ADAMS:

11 Q. Did you make an independent  
12 determination that the compilation you received  
13 was complete?

14 A. No.

15 MR. ADAMS: I have no further  
16 questions.

17 MS. BAILEY: And, I'm sorry. I forgot  
18 one. I'm sorry.

19 FURTHER EXAMINATION

20 BY MS. BAILEY:

21 Q. Do you have an understanding  
22 as to whether individuals who worked on the  
23 citizenship question inquiry for Secretary Ross  
24 were consulted as far as providing potential  
25 documents for the record before that

1 certification was compiled?

2 A. One more time. I apologize.

3 Q. Do you have an understanding as to  
4 whether -- in the designation of the documents  
5 compiled for the administrative record, whether  
6 individuals who had worked on the potential  
7 reinstatement of the citizenship question were  
8 consulted in order to gather documents to be  
9 compiled for that record?

10 A. Yes. That was my understanding.

11 Q. And do you have any knowledge as to  
12 whether it is customary to have an attorney or  
13 to have a person serving in a nonlegal role  
14 certify an administrative record within the  
15 agency?

16 A. That's my understanding.

17 MR. ADAMS: I have no further  
18 questions.

19 MS. BAILEY: Thank you.

20 THE VIDEOGRAPHER: We are off the  
21 record at 3:09 p.m., and this concludes today's  
22 testimony given by Sahra Park-Su. The total  
23 number of media units was five and will be  
24 retained by Veritext Legal Solutions.

25 (Deposition concluded -- 3:09 p.m.)

1 Sahra Park-Su

3 ACKNOWLEDGMENT OF DEPONENT

4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the foregoing  
6 pages and that the same is a correct  
7 transcription of the answers given by  
8 me to the questions therein propounded,  
9 except for the corrections or changes in form  
10 or substance, if any, noted in the attached  
11 Errata Sheet.

13 \_\_\_\_\_  
14 DATE

\_\_\_\_\_  
SIGNATURE

15  
16 Subscribed and sworn to before me this  
17 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

18  
19 My commission expires: \_\_\_\_\_

20 \_\_\_\_\_  
21 Notary Public

22  
23 Job No. PA3072227  
24  
25

# EXHIBIT I

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 1:18-CF-05025-JMF

4 -----x  
NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

6 Global  
7 objection:  
8 - against - 401, 403  
9

10 UNITED STATES DEPARTMENT OF COMMERCE,  
ET AL.,

11 Defendants.

-----x

12 August 24, 2018  
9:07 a.m.

13  
14  
15 Videotaped Deposition of WENDY  
16 TERAMOTO, taken by Plaintiffs, pursuant to  
17 Notice, held at the offices of Arnold &  
18 Porter Kaye Scholer LLP, 250 West 55th  
19 Street, New York, New York, before Todd  
20 DeSimone, a Registered Professional  
21 Reporter and Notary Public of the State of  
22 New York.

23 VERITEXT LEGAL SOLUTIONS  
MID-ATLANTIC REGION  
24 1250 Eye Street NW - Suite 350  
Washington, D.C. 20005  
25

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9 ALSO PRESENT:

10 CARLOS KING, Videographer

11

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14

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## I N D E X

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1 DIRECTIONS NOT TO ANSWER

2 Page Line

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3 72 13

81 11

4 114 16

5

6 REQUESTS

7 Page Line

(NONE)

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1 THE VIDEOGRAPHER: Good morning.  
2 We are going on the record at 9:07 a.m. on  
3 August 24th, 2018.

4 Please note that the  
5 microphones are sensitive and may pick up  
6 whispering, private conversations and  
7 cellular interference. Please turn off all  
8 cell phones or place them away from the  
9 microphones as they can interfere with the  
10 deposition audio. Audio and video  
11 recording will continue to take place  
12 unless all parties agree to go off the  
13 record.

14 This is media unit number one  
15 of the video-recorded deposition of Wendy  
16 Teramoto taken by counsel for plaintiffs in  
17 the matter of New York Immigration  
18 Coalition, et al., versus United States  
19 Department of Commerce, et al., filed in  
20 the United States District Court, Southern  
21 District of New York, case number  
22 1:18-CF-05025-JMF. This deposition is  
23 being held at the offices of Arnold &  
24 Porter located at 250 West 55th Street, New  
25 York, New York.

1                   My name is Carlos King from the  
2                   firm of Veritext and I am the videographer.  
3                   The court reporter is Todd DeSimone also  
4                   from Veritext. I'm not authorized to  
5                   administer an oath, I'm not related to any  
6                   party in this action, nor am I financially  
7                   interested in the outcome.

8                   All appearances will be noted  
9                   on the steno record. Will the court  
10                  reporter please swear in the witness.

11                  \*       \*       \*

12                  W E N D Y       T E R A M O T O,  
13                  called as a witness, having been first duly  
14                  sworn, was examined and testified  
15                  as follows:

16                  EXAMINATION BY MR. GERSCH:

17                  Q.           Please state your name and work  
18                  address.

19                  A.           My name is Wendy Teramoto and I  
20                  work at the Department of Commerce in  
21                  Washington.

22                  Q.           Do you do your work in  
23                  Washington D.C.?

24                  A.           Yes, sir.

25                  Q.           And how are you employed at the

1 Department of Commerce? What is your  
2 position or title?

3 A. I am the chief of staff and  
4 senior advisor.

5 Q. And for how long have you held  
6 that position?

7 A. Just about a year.

8 Q. Let's go back a little. I want  
9 to get some background first and then we  
10 will move forward.

11 I understand that you graduated  
12 from the University of Colorado at Boulder;  
13 is that right?

14 A. Yes, sir.

15 Q. In 1996?

16 A. Yes, sir.

17 Q. With a degree in accounting?

18 A. Yes, sir.

19 Q. And graduated with honors?

20 A. Yes, sir.

21 Q. You are a founding partner of  
22 WL Ross & Company in 2000?

23 A. I believe it was 2000, yes,  
24 sir.

25 Q. What did you do between

1           A.           Well, she did not work at WL  
2   Ross & Co., but she had worked at Invesco  
3   and Invesco purchased WL Ross & Co.

4           Q.           Other than yourself -- and I  
5   take it Under Secretary Kelley would have  
6   known Secretary Ross from that context?

7           A.           Sure.

8           Q.           Other than yourself and Under  
9   Secretary Kelley, is there anyone else at  
10   the Commerce Department now in a senior  
11   position who has had a prior relationship  
12   with Secretary Ross?

13                   MS. WELLS: I object to the  
14   form.

15           A.           I mean, not to my knowledge,  
16   but when you say prior relationship, I  
17   mean, the Secretary knows a lot of people,  
18   so if he had known somebody and met  
19   somebody at some other gathering ten years  
20   ago and they happened to now work at  
21   Commerce, sir, I just -- I don't know.

22           Q.           I understand.

23           A.           To the -- I'm just thinking  
24   through. I can't think of anybody now.

25           Q.           All right. When did you first



1 hear about the notion of adding a question  
2 about citizenship to the census?

3 A. I just don't remember.

4 Q. Is there any way you would be  
5 able to date that?

6 A. No.

7 Q. Is there any kind of document  
8 that you remember as -- well, withdrawn.

9 How did you first hear about  
10 the notion of adding a citizenship question  
11 to the census?

12 A. I don't remember.

13 Q. Would that be reflected in any  
14 documents?

15 A. Not that I would be aware of.

16 MR. GERSCH: Let's mark as  
17 Teramoto Exhibit 1 a document Bates stamped  
18 1321.

19 (Teramoto Exhibit 1 marked for  
20 identification.)

21 Q. I have handed the witness an  
22 exhibit marked Teramoto Exhibit 1 titled  
23 The Supplemental Memorandum of Secretary of  
24 Commerce Wilbur Ross Regarding the  
25 Administrative Record in Census Litigation.

1           The second thing that was  
2     talked about a lot was how is the Census  
3     Department going to be able to ramp up the  
4     employment of I believe it is half a  
5     million people over a very short amount of  
6     time and how are we going to do that  
7     effectively. And then, you know, what do  
8     you do to ensure that there is the most  
9     accurate count.

10           I mean, those are the themes.  
11     I don't remember specifically the question  
12     that you are talking about.

13           Q.       You don't remember the -- well,  
14     withdrawn.

15                   Do you remember that there was  
16     a time when the question of adding a  
17     citizenship question to the census came up?

18           MS. WELLS: I object to form.

19           A.       I don't remember a specific  
20     conversation or meeting where it came up.

21                   And I should also tell you,  
22     sir, you know, I was not -- I was not  
23     involved in most of the census meetings at  
24     all. I mean, you know, when you look at  
25     Commerce, some of the departments that we

1 have are extremely scientific and  
2 technical. NOAA is one of them and Census  
3 is another one. So, you know, I was not  
4 involved in those areas.

5 Q. Did you have any responsibility  
6 or did you undertake to do anything with  
7 respect to getting the citizenship question  
8 on the census?

9 A. I'm not sure what you mean by  
10 any responsibility.

11 Q. Did you undertake any tasks  
12 related to trying to get a citizenship  
13 question put on the census?

14 A. Did I personally? No.

15 Q. None whatsoever?

16 A. Did I ever -- I guess I'm a  
17 little confused. You are asking if I did  
18 anything for the citizenship question?

19 Q. I'm asking if you did anything  
20 to try and help get a citizenship question  
21 put on the census.

22 A. No.

23 MR. GERSCH: Let's mark  
24 Teramoto Exhibit 2.

25 Counsel, this is a two-page

1 document. The second page, for reasons I  
2 don't understand, are blank. I propose  
3 only to mark the first page, unless you  
4 object.

5 MS. WELLS: No objection.

6 (Teramoto Exhibit 2 marked for  
7 identification.)

8 Q. For the record, this is Bates  
9 stamped 3699. It is an e-mail thread, the  
10 top one of which states that it is from  
11 Secretary Ross sent May 2nd, 2017 to Wendy  
12 Teramoto, "Re: Census."

13 Take a moment to read this, I  
14 think most of it is blacked out, and let me  
15 know when you've had a chance to do that.

16 (Witness perusing document.)

17 A. Okay.

18 Q. Ms. Teramoto, let me direct you  
19 to the middle of the document where it says  
20 "Begin Forwarded Message: From: Alexander,  
21 Brooke, To: Wendy Teramoto."

22 Do you see that?

23 A. Uh-huh. Yes, sir.

24 Q. So this appears that she is  
25 forwarding a message, and then the message

1 that she appears to be forwarding is headed  
2 Original Message from Wilbur Ross to Earl  
3 Comstock and Ellen Herbst.

4 You see that, right?

5 A. Correct. I'm not on the  
6 original e-mail.

7 Q. Correct.

8 And then Secretary Ross has  
9 written "Worst of all, they emphasize they  
10 have settled with Congress on the questions  
11 to be asked. I am mystified why nothing  
12 have been done in response to my months old  
13 request that we include the citizenship  
14 question. Why not?"

15 All right, this question  
16 appears to have been forwarded to you May  
17 2nd, 2017. Do you remember that?

18 A. I don't -- I don't remember  
19 receiving it.

20 Q. Do you deny receiving it?

21 A. No.

22 Q. And then above the forwarding  
23 part, there is a message that says "Wendy  
24 Teramoto wrote: I continue to talk  
25 frequently with Marc Neumann and we often

1 have dinner together. He will not leave  
2 les, but is in love with the census and  
3 talks about it nonstop. Do you want me to  
4 set up another meeting? Let me know if you  
5 want to have a drink or get together over  
6 the weekend."

7 Then Secretary Ross has written  
8 in response to you, "Let's try to stick him  
9 in there for a few days to fact-find."

10 Do you see that?

11 A. Yes, sir.

12 Q. So you would have received this  
13 at the beginning of May, and the message  
14 that is forwarded to you has Secretary Ross  
15 complaining that nothing has been done in  
16 response to his months-old request that we  
17 include a citizenship question.

18 Does this help you remember  
19 that you had some involvement in getting  
20 the citizenship question on the census?

21 A. No.

22 MS. WELLS: Objection to form.

23 A. Well, wait a minute. First of  
24 all, this is -- this is two sentences out  
25 of an e-mail that I have no idea what else

1 was said. It is titled Census.

2 So this has -- I mean, just  
3 because, you know, for you to imply that  
4 because I had suggested he set up a meeting  
5 or talk to somebody who worked on the  
6 transition team for census has nothing to  
7 do with, in my eyes, the citizenship  
8 question. It has to do with the census as  
9 a whole.

10 Q. Ms. Teramoto, you started  
11 earlier in your answer referencing that  
12 there were things in the message that you  
13 can't read.

14 Do you understand that it is  
15 the government lawyers who have blocked  
16 that information out?

17 A. Between all the lawyers, I  
18 mean, you know, it's not -- I'm not part of  
19 the process of what is shown or what's not.  
20 I know that they follow the rules and  
21 regulations of what they are supposed to  
22 do.

23 Q. My question is, do you  
24 understand that it is the government  
25 lawyers who have blocked that information

1 out that you say you can't read on here?

2 A. If that's what you are telling  
3 me, I have no reason to believe that it's  
4 not true.

5 Q. All right. When Secretary Ross  
6 says "I'm mystified why nothing have been  
7 done in response to my months old request,"  
8 why did Secretary Ross request as of  
9 several months apparently before May 2nd,  
10 2017, why did he request that a citizenship  
11 question be included on the census?

12 A. I have no idea. I mean, as you  
13 have correctly pointed out, this was in  
14 May. I didn't write the e-mail and I  
15 wasn't even -- he didn't even send it to  
16 me.

17 Q. I take it your testimony is  
18 that Secretary Ross never told you the  
19 reason that he made such a request?

20 A. I have never asked.

21 Q. That's not my question. Did he  
22 ever tell you?

23 A. No.

24 Q. Did you ever learn to whom he  
25 made that request?



1 A. Of what?

2 Q. The request to add a  
3 citizenship question.

4 MS. WELLS: I object to form.

5 A. I guess I'm confused. Can you  
6 please repeat the question?

7 Q. Certainly.

8 He says he "made a months old  
9 request that we include a citizenship  
10 question." Did you ever learn to whom he  
11 made the request?

12 A. I have no idea.

13 Q. All right. So this is  
14 forwarded to you by Brook Alexander, and  
15 you respond by saying that you talk  
16 frequently with Marc Neumann and asking if  
17 the Secretary wants to meet with him.

18 Who is Marc Neumann?

19 A. So Marc Neumann was somebody  
20 that I met on the transition team who had  
21 worked at Census before.

22 Q. And did you discuss the  
23 citizenship question with Marc Neumann?

24 A. Did I?

25 Q. Yes.

1 A. Not that I remember.

2 Q. And --

3 A. Again, a lot of the census  
4 focus was on the budget and how are you  
5 going to properly ramp up half a million  
6 employees in such a short amount of time.

7 Q. When Secretary Ross says "Let's  
8 try to stick him in there for a few days to  
9 fact-find," did you do that?

10 A. I believe so, but I don't -- I  
11 believe I did, but I don't remember when.

12 Q. Okay. And when you say you  
13 believe you did, what is it that you had  
14 him do? Did you have him go down to the  
15 Census Bureau?

16 A. Have who go down?

17 Q. Mr. Neumann.

18 A. No.

19 Q. When it says "Let's try to  
20 stick him in there a few days to  
21 fact-find," who is the "him"?

22 A. I mean, I didn't write the  
23 e-mail. If you want me to guess.

24 Q. This is from the Secretary to  
25 you, correct?

1 but it was -- I believe it was right at the  
2 end of July of 2017.

3 Q. Did you ever speak with Marc  
4 Neumann about the citizenship question?

5 A. Not that I remember.

6 Q. You are still chief of staff  
7 today, correct?

8 A. As far as I know, sir.

9 Q. Let's mark another document.  
10 Let's have this marked as Teramoto Exhibit  
11 No. 3. It is a two-page document, 763 and  
12 764.

13 (Teramoto Exhibit 3 marked for  
14 identification.)

15 A. Is this the entire e-mail, sir?

16 Q. That's what has been produced  
17 to us.

18 A. Okay. Would you like me to  
19 read it, sir?

20 Q. I'm going to ask you a question  
21 about it, and at that point I would say  
22 read it to the extent you need to read it  
23 to answer the question.

24 A. Okay.

25 Q. So this is an e-mail chain,

1 of State of Kansas, have you heard that  
2 before?

3 A. Well, I just read it right  
4 here.

5 Q. So you would have known that  
6 back in the day?

7 A. No.

8 Q. All right. So Kris Kobach  
9 writes an e-mail to you, if you look down  
10 that first page, July 21, 2017, he writes  
11 "Wendy, nice meeting you on the phone this  
12 afternoon. Below is the e-mail I sent to  
13 Secretary Ross" --

14 A. Sir, can I read the whole  
15 e-mail, please?

16 Q. Sure.

17 A. Thank you.

18 (Witness perusing document.)

19 A. Okay.

20 Q. All right. So there is an  
21 e-mail from Kris Kobach to you, July 21, in  
22 which he says -- he references meeting you  
23 on the phone this afternoon.

24 Do you recall speaking with  
25 Kris Kobach?

1 A. Not at all.

2 Q. You don't deny speaking with  
3 him?

4 A. I think you asked me if I  
5 remember. I don't remember talking to him.

6 Q. This is a different question.  
7 You don't deny speaking with  
8 him?

9 A. Given this e-mail, I would  
10 assume that I spoke to him, but I don't  
11 remember ever speaking to him.

12 Q. All right. And he asks --  
13 withdrawn.

14 He says that he had sent an  
15 e-mail to Secretary Ross and he attaches it  
16 here. You see that, correct?

17 A. Well, I see his e-mail to me  
18 says "Below is the e-mail that I sent to  
19 Secretary Ross."

20 Q. Okay.

21 A. So I assume however this is  
22 produced, it would have been this e-mail.

23 Q. All right. And one of the  
24 things that the e-mail that Kris Kobach  
25 forwards to you, one of the things in it is

1 the statement "It is essential that one  
2 simple question be added to the upcoming  
3 2020 census," that's the first sentence of  
4 the second paragraph of this forwarded  
5 e-mail; do you see that?

6 A. The second -- the first  
7 sentence of the second paragraph that Kris  
8 Kobach sent to, I believe it is Secretary  
9 Ross, but I can't say his -- there is no  
10 e-mail address -- says "It is essential  
11 that one simple question be added to the  
12 upcoming 2020 census."

13 Q. All right. When you spoke with  
14 Kris Kobach, didn't he talk to you about  
15 adding a citizenship question to the  
16 census?

17 A. Again, I have no recollection  
18 ever speaking to him.

19 Q. Who did you understand Kris  
20 Kobach to be at the time?

21 A. I had no idea.

22 Q. Do you typically set up  
23 meetings with the Secretary or calls with  
24 the Secretary to people -- with people you  
25 have no idea who they are?

1           A.           You asked me, sir, if at the  
2 time if I knew who Kris Kobach was, and I  
3 said I didn't.

4           Q.           Correct. I have asked you a  
5 different question now.

6           A.           Okay. Could you please repeat  
7 it?

8           Q.           My question is, would you  
9 typically set up a call for the Secretary  
10 with somebody who you didn't know anything  
11 about who they were?

12          A.           Well, no.

13          Q.           Why did you do so on this  
14 occasion?

15          A.           Here it looks as though he  
16 forwarded to me and told me who he was.

17          Q.           Okay. And why did you set up a  
18 call with him with the Secretary?

19          A.           At this point in time, I don't  
20 remember.

21          Q.           It had to do with the  
22 citizenship question, didn't it?

23          A.           He had sent an e-mail  
24 requesting a call, and I don't remember,  
25 well, it looks like I set it up, so, you

1 know --

2 Q. Ms. Teramoto, my question is  
3 simply, the call that you set up, that was  
4 for the purpose of discussing the  
5 citizenship question, correct?

6 A. It was -- I would have set up  
7 the call because somebody had asked for a  
8 call with the Secretary.

9 Q. Didn't you set it up for the  
10 Secretary in part because it was about the  
11 citizenship question?

12 A. I would have set up the call  
13 because somebody had asked for the call  
14 with the Secretary. It wouldn't be  
15 specifically because of a certain question.

16 Q. You wouldn't set up a call for  
17 anyone who asks for a call with the  
18 Secretary, would you?

19 A. If there is somebody who wants  
20 to speak to the Secretary and it seems like  
21 it is something that he would want to talk  
22 about, then I would set it up.

23 Q. So I take it he would, in your  
24 mind, he would have wanted to talk about  
25 the citizenship question?



1           A.           I would have set up the call if  
2           somebody like this would have asked for a  
3           call with the Secretary, so if another  
4           Secretary of State had asked for some call  
5           with the Secretary, I would have tried to  
6           facilitate that.

7           Q.           Wouldn't you have told the  
8           Secretary what the topic of the call was?

9                       MS. WELLS: I object to the  
10          form.

11          A.           It depends.

12          Q.           Wouldn't you have told him what  
13          the topic of this call was?

14                       MS. WELLS: I object to the  
15          form.

16          A.           Somebody would have told him  
17          what the topic was.

18          Q.           In this time period, July 2017,  
19          and earlier, hadn't you heard talk like  
20          this before that it is essential that the  
21          citizenship question be added to the  
22          census?

23          A.           I don't remember anything  
24          specific.

25                       Again, sir, I was not involved

1 in the day-to-day workings of the census.  
2 I think that's also demonstrated by the  
3 fact that I wasn't -- I don't remember ever  
4 being on this call, and it doesn't look  
5 like when I set it up, I had any intention  
6 of being on that call.

7 Q. In his e-mail to you, Kris  
8 Kobach also said that when he spoke to the  
9 Secretary, he did so at the direction of  
10 Steve Bannon.

11 Steve Bannon worked in the  
12 White House, correct?

13 A. Yes.

14 Q. Did you ever talk to Steve  
15 Bannon about the census?

16 A. Never.

17 Q. Did you ever set up a call for  
18 the Secretary and Steve Bannon about the  
19 census?

20 A. No.

21 Q. Would there be notes of the  
22 Secretary's conversation with Kris Kobach?

23 A. I have no idea, sir, because I  
24 wasn't part of that call.

25 Q. Were there -- but as his chief

1 10:01 a.m. and this marks the end of media  
2 unit number one.

3 (Recess taken.)

4 THE VIDEOGRAPHER: The time is  
5 10:10 a.m. and this begins media unit  
6 number two.

7 BY MR. GERSCH:

8 Q. Ms. Teramoto, you have in front  
9 of you what has been marked Teramoto  
10 Exhibit 4.

11 My first question, simple one,  
12 the top line of this memo, I'm sorry, this  
13 exhibit, indicates that it is an e-mail  
14 from Earl Comstock dated August 16, 2017 to  
15 you, CC'd to the Secretary; is that  
16 correct?

17 A. So that's not the original  
18 thread of the e-mail, right? The original  
19 e-mail looks as though it is August 11th  
20 from Earl to -- I still can't see how --

21 Q. My question was a little bit  
22 different.

23 A. Okay.

24 Q. My question was simply, the top  
25 part of the e-mail, the top part of the

1 exhibit, I'm sorry, the top part of the  
2 exhibit indicates that it is an e-mail from  
3 Earl Comstock to you dated August 16, 2017  
4 and CC'd to the Secretary?

5 A. Yeah.

6 Q. And its subject is Memo on  
7 Census Question, correct?

8 A. Sure.

9 Q. And the e-mail immediately  
10 below that is from you to Mr. Comstock,  
11 CC'd to the Secretary, also on the subject  
12 Memo on the Census Question, correct?

13 A. From me to Earl, correct? It  
14 looks like I'm responding to --

15 Q. We will get to that.

16 A. -- an original e-mail.

17 Q. Who is Earl Comstock?

18 A. So Earl Comstock is the current  
19 director of policy at the Department of  
20 Commerce.

21 Q. And what do you understand his  
22 responsibility to be in that function?  
23 Actually, I withdraw that.

24 Was he in this position at that  
25 time, roughly?

1 Q. All right. You have read it.  
2 You see, I take it, that  
3 Mr. Comstock has written the Secretary that  
4 he is enclosing a draft memo on the  
5 citizenship question, and then that e-mail  
6 has found its way to you because you are on  
7 this chain, correct?

8 A. I believe so. Again, I know,  
9 sir, it's not your fault, but I find it  
10 just tricky to follow the e-mail chains,  
11 because, again, here we have an e-mail from  
12 Earl Comstock, and it's, you know,  
13 addressed to the Secretary, so I assume he  
14 e-mailed it to the Secretary. I just can't  
15 see it.

16 Q. All right. In any event, you  
17 respond to Mr. Comstock, CC to the  
18 Secretary, that "Peter Davidson and Karen  
19 Dunn Kelley will both be here Monday.  
20 Let's spend 15 minutes together and sort  
21 this out. W."

22 A. Sure.

23 Q. And this is on the memo on the  
24 citizenship question?

25 A. Sure.

1 Q. So it appears that you had some  
2 involvement with the citizenship question,  
3 correct?

4 A. If setting up a meeting -- it  
5 looks like I set up a meeting for them. I  
6 don't ever remember being at that meeting.

7 Q. All right, thank you for that.  
8 But it does suggest -- am I  
9 reading it right when it suggests that you  
10 are going to participate in this meeting?  
11 "Let's spend 15 minutes together and sort  
12 this out."

13 MS. WELLS: Objection to form.

14 A. No.

15 Q. You don't read that as saying  
16 you would participate in the meeting?

17 MS. WELLS: I object to the  
18 form.

19 A. When I say "let's," it doesn't  
20 mean I always join the meetings. Let's  
21 have the group get together.

22 Q. All right. I'm sorry, finish  
23 your answer.

24 A. I don't remember -- I don't  
25 remember ever participating in this

1 meeting.

2 Q. If there was such a meeting,  
3 would you have typically put it on your  
4 calendar if you were participating?

5 A. If there was such a meeting?  
6 No, I mean, again, again, I did not  
7 participate in very many census meetings at  
8 all.

9 Q. Is it your testimony that you  
10 did not participate in this meeting?

11 A. My testimony is that I don't  
12 remember being in a meeting with Peter  
13 Davidson and Karen Dunn Kelley specifically  
14 talking about the census memo.

15 Q. Do you have an understanding as  
16 to why this is coming to you if you have no  
17 involvement with the citizenship question?

18 A. Sure. People CC me on things.

19 Q. Why are you the one setting up  
20 the meeting?

21 A. Probably because I said people  
22 should get together and discuss it.

23 Q. Why do they need you to do  
24 that? Why can't they do that without you?

25 A. I'm sure they can.

1 Q. You agree that someone would  
2 have had to forward Earl Comstock's  
3 original e-mail to the Secretary about this  
4 to you for you to be setting up the  
5 meeting?

6 A. Somebody would have had to  
7 forward -- I'm sorry, can you say that  
8 again?

9 Q. Yeah. For you to be setting up  
10 this meeting and for you to have a copy of  
11 Earl Comstock's e-mail to the Secretary  
12 about the citizenship question memo,  
13 someone would have had to forward you that  
14 e-mail?

15 A. Sir, that's the exact thing I  
16 was telling to you earlier, is that the way  
17 these are laid out, I know it is not your  
18 fault, it is just confusing. I don't know  
19 if it was forwarded or if I was CC'd on it.

20 And I can't tell, you know,  
21 who -- I mean, it says that it is what Earl  
22 Comstock wrote, but I don't see who he sent  
23 it to, so I share your frustration.

24 Q. You don't deny getting a copy  
25 of Earl Comstock's e-mail to Secretary



1 Ross, do you?

2 A. Again, from what I can see  
3 here, it looks as though I was either  
4 forwarded or CC'd it. I don't know. I'm  
5 guessing like you are, sir.

6 Q. My question was a little more  
7 specific.

8 You don't deny receiving a copy  
9 of Earl Comstock's e-mail at the bottom of  
10 that page --

11 MS. WELLS: I object to the  
12 form.

13 Q. -- saying that he has got a  
14 memo for the Secretary about the  
15 citizenship question?

16 MS. WELLS: Objection to form.

17 A. My best guess, sir, is that it  
18 was sent to my e-mail.

19 Q. Thank you.

20 Let's mark this as Teramoto  
21 Exhibit No. 5. It is a two-page document  
22 Bates stamped 1411 and 1412.

23 (Teramoto Exhibit 5 marked for  
24 identification.)

25 Q. All right. You have in front

1 of you what has been marked as Exhibit 5.

2 My first question is going to  
3 go to what is on the second page, that is  
4 the first e-mail in the thread, which says  
5 it is sent from Peter Davidson August 29,  
6 2017, to Israel Hernandez, Earl Comstock,  
7 James Uthmeier, CC'd to you, and it says  
8 "The Secretary asked to set up a briefing  
9 on some of the legal questions he is  
10 concerned with." The subject is the  
11 Census. And it goes on.

12 Do you know why this was CC'd  
13 to you?

14 A. Sir, can I read the e-mail,  
15 please?

16 Q. Sure.

17 A. Thanks.

18 (Witness perusing document.)

19 A. Okay. Could you please repeat  
20 your question, sir?

21 Q. Do you know why this was CC'd  
22 to you?

23 A. Probably for situational  
24 awareness or seeing if when he had time on  
25 his calendar.

1 Q. All right. And then --

2 A. Because this is, again, I was  
3 only CC'd, this isn't even to me.

4 Q. Understood.

5 A. Okay.

6 Q. Then the scheduler, who at the  
7 time, who is Chelsey Neuhaus, she sends  
8 around an e-mail August 29, 2017, this is  
9 on the first page, that says "Would one of  
10 you be able to confirm that these are the  
11 only attendees that should be included in  
12 next Wednesday's census briefing."

13 Do you see that?

14 A. Yes, sir.

15 Q. The first name of the people to  
16 be included is you, right?

17 A. Yes, sir.

18 Q. You participated in this  
19 briefing; is that right?

20 A. Not that I'm aware of.

21 Q. Do you deny that you  
22 participated in this meeting?

23 A. I don't remember attending this  
24 meeting. And just so you understand, sir,  
25 they usually include me as an attendee for

1 every single meeting of the Secretary.

2 Many of them I don't attend.

3 Q. Okay. I understand you saying  
4 that you don't recall.

5 My question is, as you sit here  
6 today, do you deny attending this meeting?

7 A. As I sit here today, I don't  
8 remember going to this and I highly doubt  
9 that I went to it. Again, I was not  
10 involved in the day-to-day interactions on  
11 the census.

12 Q. And you didn't provide any  
13 information to the Secretary to assist him  
14 in arriving at his decision to add a  
15 citizenship question to the census?

16 MS. WELLS: I object to the  
17 form. Asked and answered.

18 A. Again, you know, relating to  
19 census, there is an entire Census Bureau,  
20 so I would have facilitated a meeting, but  
21 I clearly would not be the one to -- I'm  
22 not the appropriate person to provide  
23 information for him on these types of  
24 things.

25 Q. My question was a little

1 Q. Sure. Did you provide any  
2 information to Secretary Ross to assist him  
3 in arriving at his decision to add the  
4 citizenship question?

5 MS. WELLS: I will say asked  
6 and answered again.

7 A. Okay, thank you.

8 I certainly did not create any  
9 information to give to the Secretary  
10 relating to the citizenship question.

11 Q. Let's have this marked as  
12 Teramoto Exhibit 6.

13 (Teramoto Exhibit 6 marked for  
14 identification.)

15 Q. For the record, this is  
16 Teramoto Exhibit 6, Bates stamped 2519 and  
17 2520. At the top, it is an e-mail from  
18 Earl Comstock to Wilbur Ross, CC'd Wendy  
19 Teramoto, "Re: IT Request."

20 And I will add for the record  
21 there are seven lines of substantive text  
22 in this e-mail.

23 Ms. Teramoto, the subject line  
24 is "Re: IT Request" and then something is  
25 blanked out. What is IT request? Does

1 e-mail, I would have been aware that he was  
2 asking about it.

3 Q. Would you read e-mails from the  
4 Secretary?

5 A. It depends.

6 Q. Are there e-mails from the  
7 Secretary that you choose not to read?

8 A. Sure, or that I skim.

9 Q. At the top, Mr. Comstock says  
10 "Understood. Wendy and I are working on  
11 it." Then he says "On census, I have a  
12 meeting tomorrow with Ellen and Karen where  
13 they are supposed to have definitive  
14 numbers. I will send you a report on the  
15 meeting and the numbers," and he goes on.

16 When he says "Wendy and I are  
17 working on it," do you know what that  
18 means?

19 A. I assume it is some ITA  
20 request.

21 Q. Did you learn that, through the  
22 course of 2017, either directly from the  
23 Secretary or from other people who worked  
24 at Commerce, that the Secretary was very  
25 interested in adding a census question --

1 I'm sorry, a citizenship question to the  
2 census?

3 MS. WELLS: I object to form.

4 A. Did I learn throughout 2017?

5 Q. During 2017.

6 A. It is hard for me to say very  
7 interested. It clearly was a topic that  
8 had come up.

9 Q. Did you learn that it was a  
10 matter of importance for him?

11 A. I don't know how to engage  
12 matter of importance. There is a lot of  
13 things that are important to him.

14 The budget on census, I  
15 remember that being extremely important to  
16 him. I remember --

17 Q. Wasn't the -- I'm sorry, go  
18 ahead.

19 A. -- spending time trying to  
20 figure out how we are going to ramp up the  
21 employment for census. I remember those.

22 Q. Wasn't the citizenship question  
23 important to Secretary Ross?

24 MS. WELLS: I object to the  
25 form.

1           A.           Again, I can't answer, sir,  
2           what is or is not important to the  
3           Secretary.

4           Q.           Who could?

5           A.           The Secretary.

6                       (Teramoto Exhibit 7 marked for  
7           identification.)

8           Q.           Ms. Teramoto, I have handed you  
9           what has been marked Teramoto Exhibit 7,  
10          which at the top is a memo -- an e-mail,  
11          sorry, from Earl Comstock dated September  
12          16, 2017 to you. Do you see that?

13          A.           Yes, sir. Would you like me to  
14          read it?

15          Q.           In a moment.

16                       Earl's memo to you says  
17          "Morning Wendy: Here is the memo I gave  
18          SWLR regarding my discussions with DOJ.  
19          Earl."

20                       I take it SWLR will refer to  
21          the Secretary, Secretary Wilbur L. Ross?

22          A.           Yes, sir.

23          Q.           And then below that is the memo  
24          or e-mail that he sent to the Secretary  
25          which is dated September 8, 2017 from Earl



1 Comstock to Secretary Wilbur Ross, Census  
2 Discussions with DOJ.

3 And let me ask you to read that  
4 e-mail there.

5 A. Sure.

6 Q. And then I will ask you  
7 questions about it.

8 A. Okay.

9 (Witness perusing document.)

10 Q. Who is Eric Branstad?

11 A. Just a minute, sir.

12 (Witness perusing document.)

13 A. I'm sorry?

14 Q. Who is Eric Branstad?

15 A. Eric Branstad used to be the --  
16 I forgot his exact title. He was -- I  
17 don't know if he was Senior White House --  
18 I think he was the White House liaison, or  
19 the White House advisor, I'm not sure, for  
20 Commerce.

21 Q. Did he have a role with respect  
22 to the citizenship question?

23 A. Not that I'm aware of.

24 Q. Mr. Comstock -- withdrawn.

25 You understood that

1 Mr. Comstock forwarded this e-mail to you  
2 on a Saturday because he wanted you to have  
3 background on what was going on with the  
4 citizenship question, correct?

5 MS. WELLS: I object to form.

6 A. I have no idea why he sent it,  
7 but he did forward me his memo to the  
8 Secretary.

9 Q. Did you discuss -- did you have  
10 discussions with Mr. Comstock about the  
11 citizenship question in connection with  
12 this e-mail or for any reason on or about  
13 September 16th, 2017?

14 A. I don't believe so.

15 Q. And when I say on or about, I  
16 mean the day before, the day after. You  
17 don't believe you had any discussions with  
18 him?

19 A. I don't believe I actually read  
20 the memo.

21 Q. Why do you think that?

22 A. Because I wasn't involved with  
23 the census.

24 Q. You had no involvement as far  
25 as you could tell?

1 A. Very limited involvement.

2 Q. Didn't you have involvement on  
3 the citizenship question on or about  
4 September 16, 2017, and isn't that why he  
5 is sending you this e-mail?

6 MS. WELLS: I object to the  
7 form.

8 A. No. Again, as I've said, I'm  
9 copied or sent things for my situational  
10 awareness. I don't know if receiving an  
11 e-mail constitutes being involved.

12 Q. And you did nothing with  
13 respect to the citizenship question in this  
14 time frame?

15 MS. WELLS: Objection, form,  
16 asked and answered.

17 A. I don't remember receiving this  
18 e-mail. I don't remember reading this  
19 e-mail. And I certainly don't recall ever  
20 having a discussion specifically on this  
21 e-mail train with Earl Comstock around  
22 September.

23 Q. You didn't ask Mr. Comstock  
24 what's the latest on the citizenship  
25 question, what's DOJ doing on the

1 citizenship question, anything like that?

2 MS. WELLS: I object to form.

3 A. Not that I remember.

4 Again, I'm CC'd on a lot of  
5 things. Just because I received the e-mail  
6 does not mean that, A, I read it, and B, I  
7 then get involved in it. There is too much  
8 stuff going on at Commerce.

9 Q. Let's have this marked as  
10 Teramoto Exhibit 8.

11 (Teramoto Exhibit 8 marked for  
12 identification.)

13 Q. You know, before I ask you to  
14 look at that document, how did you prepare  
15 for this deposition?

16 A. I met with the lawyers, who I  
17 guess would have gave me the outlines of  
18 how the depositions work in terms of, you  
19 know, make sure I'm truthful, answer the  
20 questions that you've asked.

21 Q. Were you shown any documents?

22 A. Sure.

23 Q. Were you shown any of the  
24 documents that have been marked as exhibits  
25 in this case?

1 A. Am I --

2 Q. Are you refusing to answer my  
3 questions about the documents you reviewed  
4 based on the advice or instructions of your  
5 counsel? You will want to answer that yes.

6 A. Yes, sir. Thank you for the  
7 help.

8 Q. All right. Let's turn to  
9 Teramoto Exhibit No. 8.

10 A. Okay.

11 Q. All right. This is an e-mail  
12 thread with five lines of substantive text.

13 Fair to say this is an  
14 introduction from John Gore, he is  
15 introducing himself and asking if you have  
16 time for a call, and you say yes?

17 (Witness perusing document.)

18 A. I'm sorry, sir, I don't know if  
19 that's a question.

20 Q. Yes. Did I summarize that  
21 fairly, John Gore writes you an e-mail  
22 introducing himself, he wants to speak with  
23 you and set up a call with you, and you say  
24 yes?

25 A. Yes, sir.

1 Q. Is this the first time you  
2 spoke to someone from the Department of  
3 Justice?

4 MS. WELLS: I object to the  
5 form.

6 A. I don't know. The only other  
7 person that I would have -- when is this --  
8 September -- the Cabinet Affairs Director  
9 generally holds a chief of staff meeting  
10 either every other week or weekly, so I may  
11 have met somebody who works at Department  
12 of Justice at that meeting, but -- should I  
13 wait for you?

14 Q. No.

15 A. I may have met somebody from  
16 the Justice Department, but it would have  
17 been -- the only time I can think of would  
18 have been at the chief of staff meeting,  
19 but I don't remember a name.

20 Q. This call that you had --  
21 withdrawn.

22 You did have a call with  
23 Mr. Gore, didn't you?

24 MS. WELLS: I object to the  
25 form.

1           A.           I believe so, but I don't  
2 remember.

3           Q.           And the call was about the  
4 citizenship question, wasn't it?

5                       MS. WELLS: I object to form.

6           A.           I don't remember.

7           Q.           Let's have this marked as  
8 Exhibit 9.

9                       (Teramoto Exhibit 9 marked for  
10 identification.)

11          Q.           For the record, Exhibit 9 is a  
12 two-page exhibit Bates stamped 2651 and 52,  
13 the top of which is headed with an e-mail  
14 from Danielle Cutrona to Wendy Teramoto,  
15 "Re: Call."

16          A.           Would you like me to read it,  
17 sir?

18          Q.           Let me ask you a question and  
19 then you can read whatever you need to to  
20 answer it.

21                       Ms. Teramoto, you will see at  
22 the beginning of this e-mail, at the bottom  
23 of 2652, is Mr. Gore's e-mail introducing  
24 you, and then at the very bottom -- and  
25 there is an e-mail thread.

1 At the very bottom of 2651, he  
2 says to you "By this e-mail, I introduce  
3 you to Danielle Cutrona from DOJ. Danielle  
4 is the person to connect with about the  
5 issue we discussed earlier this afternoon."

6 Take a look at the e-mail. The  
7 question I have for you is, I take it you  
8 spoke with Acting Assistant Attorney  
9 General Gore?

10 MS. WELLS: I'm going to object  
11 to the form.

12 (Witness perusing document.)

13 A. Okay. I'm sorry, sir, what was  
14 your question?

15 Q. My question was, I take it you  
16 spoke to Assistant Attorney General Gore?

17 MS. WELLS: Objection to form.

18 A. I don't remember speaking to  
19 him.

20 The e-mail that he sent to me  
21 said Danielle is the person to connect with  
22 about the issue we discussed earlier this  
23 afternoon. So I have no reason to believe  
24 that I did not talk to him, but I don't  
25 remember speaking to him.



1 Q. Understood. And the issue that  
2 you spoke with Assistant Attorney General  
3 Gore about, that was about the citizenship  
4 issue; is that correct?

5 MS. WELLS: I object to the  
6 form.

7 A. Again, I don't remember -- I  
8 don't remember speaking to John Gore.

9 Q. Higher up on the page,  
10 September 17, 2017 at 12:10, Ms. Cutrona  
11 e-mails you that "the Attorney General is  
12 available on his cell," and then she goes  
13 on to say "the AG is eager to assist."

14 Wasn't that in connection with  
15 the citizenship question?

16 MS. WELLS: I object to the  
17 form, lack of foundation.

18 A. I mean, I didn't -- I didn't  
19 write the e-mail. You would have to ask  
20 Danielle Cutrona.

21 Q. You were the recipient of the  
22 e-mail; is that correct?

23 A. Well, it says to me. Again, I  
24 can't see how these e-mails are sent to,  
25 but I have no reason to believe I didn't

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1 receive this e-mail.

2 Q. It says "Wendy," comma, at the  
3 beginning of the e-mail, right? You are  
4 the recipient?

5 A. Again, I agree with you, I'm a  
6 Wendy. It is just frustrating that you  
7 can't see who is actually -- these are  
8 addressed to. I have no reason to believe  
9 I didn't receive this.

10 Q. All right. And in this period  
11 of time, September 18th, 2017, you would  
12 have been chief of staff for the Secretary  
13 of Commerce, right?

14 A. Yes.

15 Q. And you knew that the AG was  
16 eager to assist with respect to the  
17 citizenship question, didn't you?

18 MS. WELLS: I object to form,  
19 mischaracterizes her testimony.

20 A. You would have to ask Danielle  
21 Cutrona, because she is the one who wrote  
22 this e-mail.

23 Q. Didn't you learn that the  
24 Secretary -- I'm sorry, didn't you learn  
25 that the Attorney General of the United

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1 States wanted to assist with respect to the  
2 citizenship question?

3 MS. WELLS: I object to the  
4 form, asked and answered.

5 A. Again, I didn't write the  
6 e-mail. I'm reading the exact same e-mail  
7 that you are.

8 Q. My question has nothing to do  
9 with the e-mail now.

10 Didn't you learn that the  
11 Attorney General of the United States  
12 wanted to assist Secretary Ross with  
13 respect to adding a citizenship question?

14 MS. WELLS: I object to form.

15 A. Sir, I'm reading the same  
16 e-mail that you are. I don't see in here  
17 that it says the citizenship question. It  
18 says "the AG is eager to assist." I have  
19 no idea what else the Secretary and the AG  
20 may or may not have been working on.

21 Q. Ms. Teramoto, for the third  
22 time, my question is not about the e-mail.

23 My question is, you came to  
24 learn, did you not, that the Attorney  
25 General of the United States was interested

1 that.

2 Q. Yes or no.

3 A. Did I know -- I would say --

4 Q. One or the other.

5 A. Could you please -- could you  
6 please repeat the question?

7 Q. Sure. Whether or not you  
8 recall speaking to the Attorney General,  
9 you knew that the Attorney General of the  
10 United States and Secretary Ross were  
11 working together to add a citizenship  
12 question to the census, didn't you?

13 MS. WELLS: I object to form.

14 A. I was not part of discussions  
15 between the Attorney General and Secretary  
16 Ross.

17 Q. Do you have that understanding  
18 from any source?

19 MS. WELLS: I object to the  
20 form.

21 Q. You've got to answer that.

22 A. Do I have -- could you repeat  
23 it, please?

24 Q. Yeah. I have been asking you  
25 didn't you know that Secretary Ross and the

1 Attorney General were working together to  
2 add a citizenship question to the census,  
3 and I understood you to say that you don't  
4 remember being in discussions with them.

5 A. Right.

6 Q. And so my question is, did you  
7 learn this from any source, whether you  
8 were in discussions with them or not?

9 A. I don't remember any specific  
10 discussions from others.

11 Q. All right. At the top of this  
12 e-mail you say, in response to Ms. Cutrona,  
13 you say "They connected. Thanks for the  
14 help. Wendy."

15 I take it you are saying the  
16 Attorney General and the Secretary spoke  
17 with each other?

18 MS. WELLS: I object to form.

19 A. Yes, sir.

20 Q. And that e-mail is September  
21 18th, 2017. Let's mark this as Teramoto  
22 Exhibit 10.

23 (Teramoto Exhibit 10 marked for  
24 identification.)

25 Q. For the record, this is an

1 exhibit Bates stamped 2528. It is a single  
2 page and it is an e-mail from Wilbur Ross  
3 to Peter Davidson, "Subject: Census."

4 It contains a single line of  
5 text which reads as follows: "Wendy and I  
6 spoke with the AG yesterday. Please follow  
7 up so we can resolve this issue today.  
8 WLR."

9 Didn't you and Secretary Ross  
10 speak to the Attorney General on September  
11 18th, 2017?

12 MS. WELLS: I object to form.

13 A. I don't remember being a part  
14 of that call at all.

15 Q. Do you deny being part of the  
16 call?

17 A. I said I don't remember being a  
18 part of that call. I remember calls with  
19 different cabinet members. I don't ever  
20 remember being on a call with the AG.

21 Q. Can you think of any reason why  
22 Mr. Ross would get this wrong just a day  
23 after the call?

24 MS. WELLS: I object to form.

25 A. You would have to ask him, but

1 I don't remember being on the call with the  
2 AG.

3 Q. Do you have any reason to  
4 believe Mr. Ross would make up the fact  
5 that you were on the call with him and the  
6 Attorney General on or about September  
7 18th, 2017?

8 MS. WELLS: I object to form.

9 A. You would have to ask him.  
10 Again, I don't remember being on the call  
11 with the AG.

12 Q. "Him" being Secretary Ross?

13 MS. WELLS: I object to the  
14 form.

15 A. I don't remember being on a  
16 call with the AG.

17 Q. You said you will have to ask  
18 him. By "him," you meant Secretary Ross,  
19 correct?

20 A. Yes, sir.

21 Q. Okay. Regardless of whether  
22 you remember being on the call, isn't it  
23 true that this call had to do with adding a  
24 citizenship question to the census?

25 MS. WELLS: Objection to the

1           A.           Again, I wasn't -- I'm not John  
2           and I'm not Danielle, so I don't -- I don't  
3           know what their conversation was.

4           Q.           Well, I'm asking about a  
5           conversation that you had with Mr. Gore.  
6           Presumably she is referencing that  
7           conversation.

8                        Didn't you have a discussion  
9           with Mr. Gore about what you at Commerce  
10          needed them at DOJ to do?

11                       MS. WELLS: I object to form.

12          Q.           Wasn't that the purpose of the  
13          call with Mr. Gore?

14                       MS. WELLS: I object to the  
15          form.

16          A.           I think what I testified  
17          earlier is I don't remember talking to John  
18          Gore, and I still don't remember talking to  
19          John Gore.

20          Q.           Let's have this marked Teramoto  
21          Exhibit 11.

22                       (Teramoto Exhibit 11 marked for  
23          identification.)

24          Q.           All right. For the record,  
25          this is a three-page exhibit. It is 2636



1 through 2638. It includes much of the  
2 e-mail chain between Mr. Gore,  
3 Ms. Teramoto, and Ms. Cutrona that we have  
4 seen before.

5 My question is going to have to  
6 do with the e-mail at the very top of this  
7 chain in which someone who the government  
8 tells me is you e-mails Mr. Gore and says  
9 "Hi. AG and Sec spoke. Please let me know  
10 when you have a minute."

11 You understand that you are the  
12 sender of this e-mail, correct?

13 A. I mean, I can't see the address  
14 either.

15 Q. The government has represented  
16 that you are the sender.

17 A. Okay. Then okay.

18 Q. Do you accept their  
19 representation?

20 A. Sure.

21 Q. So when you write "Hi. AG and  
22 Sec" -- first of all, Sec means Secretary  
23 Ross, right?

24 A. Sure.

25 Q. So "the Attorney General and

1 Secretary spoke. Please let me know when  
2 you have a minute."

3 So certainly you know that the  
4 Attorney General Sessions and Secretary  
5 Ross had a conversation because you are  
6 reporting that, correct?

7 MS. WELLS: I object to the  
8 form. But go ahead.

9 A. My e-mail said the AG and  
10 Secretary spoke, so I must have known that  
11 they spoke.

12 Q. And then you say "Please let me  
13 know when you have a minute."

14 Did you call -- didn't you call  
15 Assistant Attorney General John Gore?

16 A. Again, to this day, again, I  
17 don't ever remember speaking to him on the  
18 phone.

19 Q. All right. But certainly as  
20 the author of this e-mail, you would read  
21 this that way, that, in other words, you  
22 would read this e-mail as saying you want a  
23 call with Assistant Attorney General Gore?

24 MS. WELLS: Objection to form.

25 A. Again, this is, you know, an

1 e-mail from a year ago that I'm reading to  
2 you that I must have written saying "Hi.  
3 AG and Sec spoke. Please let me know when  
4 you have a minute."

5 Q. Right. My question to you is,  
6 don't you understand that to be a request  
7 for Mr. Gore to speak with you further or  
8 request by you saying you would like to  
9 speak with him further?

10 MS. WELLS: I object to form.

11 A. When I read this, it would be,  
12 you know, let me know when you have a  
13 minute.

14 Q. So that you can speak with him,  
15 right?

16 MS. WELLS: I object to form.

17 A. Sure.

18 Q. And what did you speak with him  
19 about?

20 A. Again, I don't ever remember  
21 speaking to John Gore.

22 Q. You get that adding the  
23 citizenship question to the census is an  
24 important matter, don't you, Ms. Teramoto?

25 MS. WELLS: I object to the

1 person to be involved with census issues.

2 A. And I'm still not.

3 Q. I hear you on that, which is  
4 why I'm asking, so if you're not the best  
5 person to be involved, why is it that the  
6 documents make it seem like you were  
7 involved in speaking to the Assistant  
8 Attorney General of the United States about  
9 this, the Acting Assistant Attorney  
10 General, and the Attorney General of the  
11 United States?

12 MS. WELLS: I object to form.

13 A. You are asking me. I think you  
14 have to ask John Gore why he reached out to  
15 me. I can't answer why John Gore reached  
16 out to Wendy Teramoto.

17 Q. Was someone in the Department  
18 of Commerce the Secretary's point person on  
19 the citizenship question in this period?

20 A. I wouldn't characterize it like  
21 that. There was Karen Dunn Kelley, where  
22 census falls under her group, so she would  
23 have been the point for the census issues.

24 Q. Do you have an understanding as  
25 to why these calls don't go to Karen Dunn

1 it. You are the chief of staff. You  
2 certainly know that, right?

3 MS. WELLS: I object to the  
4 form.

5 A. I remember there being some  
6 discussion. I don't ever remember reading  
7 any of the correspondence.

8 Q. You remember that members of  
9 Congress having received this June 21, 2018  
10 memorandum from Secretary Ross, you  
11 remember that they accused Secretary Ross  
12 of having given them misleading testimony;  
13 is that right?

14 MS. WELLS: I object to the  
15 form.

16 A. Again, I've heard that, but I  
17 haven't actually read if there has been  
18 correspondence. I have not read any direct  
19 correspondence.

20 Q. I'm curious, you are the chief  
21 of staff. If members of Congress, and this  
22 is multiple members of Congress, accuse the  
23 Secretary of not being candid with them in  
24 sworn testimony, that's not something you  
25 want to read?

1 MS. WELLS: I object to the  
2 form.

3 Q. You don't say to somebody, get  
4 me that letter from Congress?

5 MS. WELLS: I object to the  
6 form. Go ahead.

7 A. There are many important  
8 letters and correspondence throughout all  
9 of the different departments in Commerce.  
10 I'm not physically able to read every  
11 single one, I'm just not, sir.

12 Q. I believe that. But when you  
13 hear that members of Congress have written  
14 a letter accusing the Secretary of not  
15 being candid with them, you don't say to  
16 somebody I would like to see a copy of that  
17 letter?

18 A. No.

19 Q. Have I got that right? No?

20 MS. WELLS: I object to the  
21 form. Asked and answered.

22 A. That's correct.

23 Q. It doesn't appear to be showing  
24 up on the transcript. I heard you to say  
25 no. Did I hear that right?

1 MS. WELLS: I object to the  
2 form, and it also mischaracterizes the  
3 testimony, I believe.

4 Q. I'm characterizing the  
5 transcript, which I'm looking at.

6 A. I have not specifically asked  
7 for this letter that you're talking about.

8 Q. I take it you haven't asked for  
9 it generally either?

10 A. I don't know what you mean,  
11 generally.

12 Q. You said specifically. I don't  
13 know if you are meaning to exclude  
14 something.

15 A. I'm not a lawyer, so all I'm  
16 saying is I have not asked for it.

17 Q. Okay. I know you haven't seen  
18 this before today, but I want to point you  
19 to something just so we can have a  
20 framework.

21 Sort of almost halfway down the  
22 first paragraph of Teramoto Exhibit 1,  
23 Secretary Ross says that with respect to  
24 the fundamental issues regarding the  
25 census, he says "Part of these

1 considerations included whether to  
2 reinstate a citizenship question which  
3 other senior Administration officials had  
4 previously raised."

5 Do you know who the other  
6 senior Administration officials are?

7 A. I have no idea.

8 Q. Who would know?

9 A. You would have to ask Secretary  
10 Ross.

11 Q. I will represent to you that  
12 the Commerce Department, through its  
13 lawyers at the Department of Justice, said  
14 they can't figure out the answer to this  
15 question.

16 Do you have reason to believe  
17 that the identity of the senior  
18 Administration officials is some kind of  
19 state secret?

20 MS. WELLS: I object to the  
21 form of the question.

22 A. Are you being serious?

23 Q. Yeah. I'm, frankly, shocked  
24 that the Commerce Department and the United  
25 States Justice Department can't figure out



1 who these senior Administration officials  
2 are.

3 So I'm asking you, is this some  
4 kind of state secret?

5 MS. WELLS: I object to the  
6 form of the question and also --

7 Q. Is it any kind of secret? You  
8 can withdraw "state."

9 MS. WELLS: -- the  
10 characterization of what the government has  
11 said in connection with the request for the  
12 information that you have presented in your  
13 interrogatory.

14 But you can answer the  
15 question, if you remember it.

16 THE WITNESS: I don't. Can you  
17 please read it back?

18 Q. I will rephrase it.

19 A. Okay.

20 Q. Can you think of any reason why  
21 the identity of the senior Administration  
22 officials who had raised the citizenship  
23 question to whom Mr. Ross refers, can you  
24 think of any reason why this is secret or  
25 why we can't know the answer to who those

1 people are?

2 MS. WELLS: I object to form.

3 A. I have no idea.

4 Q. I take it you have not heard  
5 any discussion of that issue?

6 A. Of the issue of the senior  
7 Administration officials?

8 Q. Yeah.

9 A. Right, I have not.

10 Q. You have not been -- you have  
11 not been asked to find out the answer to  
12 that question?

13 A. I have not been a part of it at  
14 all. You are the first person who has  
15 raised it with me.

16 Q. Still on Teramoto Exhibit No.  
17 1, when Secretary Ross says that soon after  
18 his appointment as Secretary of Commerce,  
19 he starts to have considerations into  
20 whether to reinstate a citizenship  
21 question, have you seen any documents about  
22 that of any kind, e-mails, scraps of paper,  
23 memoranda?

24 A. Where are you, sir?

25 Q. So second sentence is "Soon

1 after my appointment as Secretary of  
2 Commerce, I began considering various  
3 fundamental issues regarding the upcoming  
4 2020 census, including funding and  
5 content."

6 Then he says, the next sentence  
7 says "Part of these considerations included  
8 whether to reinstate a citizenship question  
9 which other senior Administration officials  
10 had previously raised."

11 My question to you is, have you  
12 seen -- so he is talking about a period  
13 starting soon after his appointment as  
14 Secretary of Commerce.

15 So I'm asking, have you seen  
16 any documents, any memoranda, any e-mail,  
17 scraps of paper, what have you, about the  
18 Secretary's consideration of whether to  
19 reinstate a citizenship question? Have you  
20 seen any such documents?

21 A. Outside of what you provided me  
22 here?

23 Q. Correct.

24 A. No.

25 Q. Did you ever hear or be told

1 reason that the Department of Justice asked  
2 the citizenship question is because  
3 Secretary Ross asked the Department of  
4 Justice to ask the citizenship question?

5 MS. WELLS: I object to form.

6 A. I'm sorry if I don't understand  
7 your question, but when you ask it to me,  
8 it makes it sound like you are asking me if  
9 I understand why the Justice Department did  
10 something, and, again, I have no idea how  
11 the Justice Department works, so I can't  
12 tell you why they do or do not do anything;  
13 I'm sorry, I just don't.

14 Q. Do you understand from any  
15 source that Secretary Ross went to the  
16 Department of Justice and asked them to ask  
17 for a citizenship question on the census?

18 A. Again, I don't know what direct  
19 conversations the Secretary has had with  
20 the Justice Department.

21 Q. You haven't heard about that  
22 from any source?

23 A. Heard about what?

24 Q. That Secretary Ross went to the  
25 Department of Justice and asked the

1 Department of Justice to please request the  
2 addition of a citizenship question.

3 A. I have no recollection of the  
4 Secretary ever going to the Department of  
5 Justice.

6 Q. Including you have no  
7 recollection of the Secretary talking to  
8 Assistant Attorney -- I'm sorry, to  
9 Attorney General Jeff Sessions about that?

10 A. No, that's not what I said.

11 Q. I know. That's a different  
12 question.

13 A. Okay. Can you ask your new  
14 question, please?

15 Q. Yes.

16 You understand that Attorney  
17 General Jeff Sessions spoke to Secretary  
18 Ross about asking a citizenship question on  
19 the census?

20 MS. WELLS: I object to the  
21 question, the form of the question.

22 A. From the e-mails, I can see  
23 that the Secretary and the AG spoke. What  
24 they spoke about, I don't know, because, as  
25 I said, I have no recollection of ever

1 being on a call between the two of them.

2 Q. Did you learn from any source  
3 that the Department of Commerce had made a  
4 decision in connection with the decisional  
5 memorandum not to let Congress and the  
6 public know that it was the Secretary who  
7 wanted the Department of Justice to add the  
8 citizenship question?

9 Withdrawn. Let me rephrase  
10 that.

11 A. Okay.

12 Q. Did you learn from any source  
13 that the Department of Commerce had made a  
14 decision in connection with the decisional  
15 memorandum not to let Congress and the  
16 public know that it was the Secretary who  
17 went to the Department of Justice, and it  
18 was the Secretary, the Secretary of  
19 Commerce, that is, who pressed the  
20 Department of Justice to ask for a  
21 citizenship question?

22 A. Sir, I'm not trying to be  
23 difficult. Can you shorten your questions,  
24 because there is a lot of notes and --

25 Q. Sure.

1                   So the question is, did you  
2     learn from any source --

3           A.        Okay, so did I learn from any  
4     source?

5           Q.        Right, that the Commerce  
6     Department --

7           A.        Okay.

8           Q.        -- didn't want Congress or the  
9     public to know that the Secretary of  
10    Commerce --

11                   (Telephonic interruption.)

12          Q.        Let's take it -- for the  
13     record, we have had a little interruption.  
14     Let's just take it from the top.

15          A.        Okay.

16          Q.        So the first part was, did you  
17     learn from any source; you are with me on  
18     that, right?

19          A.        Yes.

20          Q.        And the second part was that  
21     the Commerce Department didn't want the  
22     Congress or the public to know that it was  
23     Secretary Ross who went to the Department  
24     of Justice and asked the Department of  
25     Justice to request the citizenship

1 question.

2 A. I have not heard from any  
3 source that the Commerce Department did not  
4 want Congress or the public to know.

5 Q. Have you heard of any  
6 discussion even touching that subject?

7 A. Not that -- not that I can  
8 remember. I mean, again, sir, I'm not  
9 involved in the detailed discussions on  
10 census. I'm not involved in the meetings.

11 Q. I take it Secretary Ross never  
12 said to you, in words or in substance, I'm  
13 not going to tell Congress that I was the  
14 one who went to the Department of Justice  
15 and asked for the citizenship question?

16 A. Secretary Ross has never said  
17 that to me.

18 Q. Do you remember any discussion  
19 with Secretary Ross about the citizenship  
20 question?

21 A. I don't remember having any  
22 direct conversations with him on it.

23 Q. Is it your best recollection  
24 that you had no such conversations, or are  
25 you saying there were, but you don't



1 recall?

2 A. I'm saying I don't remember  
3 having any direct conversations with the  
4 Secretary on the question.

5 Q. Do you believe that you had  
6 some?

7 A. Again, I don't remember having  
8 any direct conversations with him on the  
9 citizenship question.

10 Q. My question is a little  
11 different. I'm not asking for your memory  
12 now.

13 I'm asking for whether you  
14 think you had some, for example, I can  
15 think of lots of conversations that I have  
16 had with my spouse, with my children, on  
17 certain subjects, but I can't remember the  
18 conversations, I just know I had them.

19 So I'm asking in that context,  
20 do you believe you had conversations  
21 with --

22 A. I don't think we did.

23 Q. Let me just finish the  
24 question.

25 A. I'm sorry.

1 Q. I have your answer. Let me  
2 just finish the question.

3 Do you believe you had?

4 A. I don't believe I have.

5 Again, again, I'm not the  
6 census person, so if there is issues  
7 related to census, I'm not the first person  
8 or even the second or third, fourth, fifth  
9 person that I believe the Secretary would  
10 call.

11 Q. Let me follow up on the last  
12 question.

13 Does anyone at the Commerce  
14 Department, to your knowledge, have a  
15 longer relationship with the Secretary?

16 A. Not that I'm aware of.

17 Q. Do you believe you have a  
18 relationship of trust with the Secretary?

19 A. I would hope so.

20 Q. Do you believe anyone else has  
21 a better relationship of trust with the  
22 Secretary at Commerce, anyone at Commerce?

23 A. I mean, you would have to ask  
24 the Secretary who he trusts the most.

25 Q. You're not aware of anyone

1 else?

2 A. I can't speak for who the  
3 Secretary trusts or doesn't trust.

4 Q. Besides yourself, is there  
5 anyone else the Secretary uses as a close  
6 advisor on issues of importance?

7 MS. WELLS: I object to the  
8 form.

9 Q. I will withdraw the question.

10 Is there anyone the Secretary  
11 uses as a close advisor on questions of  
12 importance and sensitivity?

13 MS. WELLS: I object to the  
14 form.

15 A. Sure, yes.

16 Q. Who are those people?

17 A. Karen Dunn Kelley, Earl  
18 Comstock.

19 Q. Anyone else?

20 A. I mean, I would say those are  
21 the immediate ones. There is other people.  
22 I mean, if it is something related to  
23 patents, he would speak to Andre Iancu.  
24 There is the Under Secretary Gil Kaplan,  
25 Matt Borman.

1 Q. How about people outside of  
2 Commerce, is there anyone outside of  
3 Commerce that the Secretary likes to talk  
4 to about important issues?

5 MS. WELLS: I object to the  
6 form.

7 Q. For advice.

8 A. On anything?

9 Q. On matters relating to  
10 Commerce.

11 A. Well, sure. I mean, a lot of  
12 the -- I would say a wide majority of the  
13 Secretary's time is spent on the trade  
14 issues as well as the tariffs and the 232s  
15 on steel and aluminum.

16 Q. How about on census, are there  
17 people outside of the Commerce Department  
18 that the Secretary turns to for advice on  
19 either the citizenship question or on the  
20 census generally?

21 A. If he goes outside of Commerce,  
22 you know, other than, you know, he has  
23 spoken to Marc Neumann, but anybody else, I  
24 wouldn't know, unless there are other  
25 people at the transition that talked to him

1 about it, but I wasn't part of the  
2 transition team, so I wouldn't know.

3 Q. If someone -- why Marc Neumann?  
4 Let me come back to him.

5 A. Sure. I think as I stated  
6 before, Marc Neumann was part of the  
7 transition team who used to work at -- I  
8 think he worked at Census, so he was the  
9 one who would brief the Secretary just on  
10 census during the transition.

11 Q. In that summer of 2017 and  
12 going to September when we saw those  
13 e-mails between you and Assistant Attorney  
14 General Gore and the other e-mails on those  
15 chains, if someone had come to you then and  
16 said Ms. Teramoto, I need -- I have got an  
17 important issue that I want to talk to you  
18 about regarding adding a citizenship  
19 question, who would you have put them in  
20 touch with?

21 MS. WELLS: I object to the  
22 form.

23 A. Well, I mean, I think I did put  
24 them in touch with Izzy Hernandez.

25 Q. And what was his position?

1           A.           He was the deputy chief of  
2   staff.

3           Q.           Did he have any special, you  
4   know, was the census question, citizenship  
5   question on the census, was that something  
6   that he had particular responsibility for?

7           A.           I mean, I don't know. He  
8   worked on the census.

9           Q.           You said he was deputy chief of  
10   staff. I take it that meant he reported to  
11   you?

12          A.           Sure.

13          Q.           So when he worked on the  
14   census, was that because you assigned it to  
15   him?

16          A.           I don't remember how that came  
17   about. I don't know if he said he wanted  
18   to work on it or if I said we need somebody  
19   to work on it. I'm not sure which one.

20          Q.           Did you hire Mr. Hernandez or  
21   play a role in his hiring?

22          A.           Yeah. I had met -- I had met  
23   Izzy during the transition and he had  
24   helped the Secretary through his  
25   confirmation process.

1 Q. Do you understand any further  
2 details about, for example, why some people  
3 don't think the citizenship question should  
4 be on the census?

5 A. I mean, the controversy, as I  
6 understand it, is, you know, does the  
7 question change or increase the ability to  
8 have an accurate count.

9 Q. And prior to the lawsuits, had  
10 you -- had anyone expressed this concern --  
11 are you aware that anyone ever expressed  
12 this concern regarding the count and the  
13 citizenship question?

14 A. Well, I don't know when the  
15 lawsuits were filed.

16 Q. Prior to March 26th when the  
17 decision was made to add the citizenship  
18 question, were you aware that there were  
19 concerns about the count if the citizenship  
20 question was added?

21 A. I can't -- I don't remember  
22 anything specific.

23 Q. Other than attorneys at the  
24 Department of Justice and Department of  
25 Commerce, have you talked to anyone else

1     that the addition of the citizenship  
2     question might make it more difficult to  
3     hire enough -- let me rephrase that.

4                     Were there any concerns that  
5     adding a citizenship question would require  
6     that the Census Bureau hire more people?

7             A.       No, I have never heard that.

8             Q.       If Secretary Ross were to be  
9     deposed in this case and he asked you for  
10    help with prepping him, what would you do  
11    to assist him in prepping?

12            A.       I wouldn't. That's for the  
13    lawyers.

14            Q.       What if he asked you about the  
15    call you had with Mr. John Gore in the  
16    summer of 2017?

17                    MS. WELLS: I object to the  
18    form.

19            A.       I would tell him the same thing  
20    that I've told your colleagues, I don't  
21    remember talking to John Gore.

22            Q.       You wouldn't offer to search  
23    through your e-mail to see if you can write  
24    down sort of a timeline of how you were  
25    involved?



1 attend the transition meeting?

2 A. No.

3 Q. You just showed up?

4 A. I was with him -- I was with  
5 him at his hearing, and then after his  
6 hearing he went to have a meeting with the  
7 transition team, and I just went with him.

8 Q. Who was at the transition  
9 meeting?

10 A. I won't remember everybody.  
11 There was Marc Neumann, there was Lilly  
12 Gaynor, Earl Comstock, I believe Eric  
13 Branstad was there.

14 Let me see. There were other  
15 people there, but I don't know -- I didn't  
16 know who they were. And you should be  
17 reminded this is well over a year and a  
18 half ago.

19 Q. Did you discuss the census at  
20 that meeting?

21 A. I don't believe so.

22 Q. Do you remember what topics you  
23 discussed?

24 A. No.

25 Q. Did you discuss reapportionment

1 during that meeting?

2 A. No. I don't think I have ever  
3 been in a discussion about reapportionment.

4 Q. Immigration enforcement?

5 A. No.

6 Q. How about not counting  
7 non-citizens?

8 A. No. Again, this was a  
9 transition meeting about him and coming in  
10 on his, you know, initial days. None of  
11 that I remember being discussed.

12 Q. Have you spoken with Stephen  
13 Bannon before?

14 A. I believe I testified that I  
15 have.

16 Q. How many times?

17 A. I'm guessing, maybe three,  
18 tops.

19 Q. When?

20 A. I mean, I don't know. I mean,  
21 I'm sure at some point I saw him in the  
22 White House and I said hello. I don't know  
23 if he said hi back to me, so I don't know  
24 if that is actually a conversation or not.

25 And then he rode on the same

1 plane back from Saudi Arabia as we did, but  
2 I didn't really talk to him because you  
3 can't hear anybody on those planes.

4 Q. You said it was three, tops.  
5 Do you remember the third time?

6 A. No. I mean, I'm guessing.

7 Q. So have you ever had a  
8 substantive conversation with him about  
9 anything?

10 A. No. I don't think he knows who  
11 I am or what my name is.

12 Q. Does Secretary Ross speak to  
13 Stephen Bannon, maybe not anymore, but in  
14 2017?

15 MS. WELLS: I object to the  
16 form.

17 A. I don't know.

18 Q. Are you aware that they ever  
19 spoke?

20 A. I'm sure there were  
21 pleasantries. If there was more discussion  
22 beyond that, I don't know.

23 Q. Is there anyone at the  
24 Department of Commerce that you are aware  
25 that has had conversations with Stephen

1 Bannon?

2 A. I have no way -- I have no way  
3 of knowing.

4 Q. So you mentioned that you are  
5 at the White House sometimes almost every  
6 day?

7 A. Sometimes. I mean, and  
8 sometimes there is weeks that I'm not  
9 there.

10 Q. When you go to the White House,  
11 do you go there -- what is it that you go  
12 to do?

13 A. Well, there will be trade  
14 meetings that I go there for. There will  
15 be meetings on Ivanka's Workforce Council.  
16 There will be meetings in the situation  
17 room on various topics. I will go there  
18 and have lunch.

19 Q. Have you ever had any meeting  
20 at the White House regarding the census  
21 generally?

22 A. No.

23 Q. How often does Secretary Ross  
24 go to the White House?

25 A. All the time.

1 Q. Are you aware of him having  
2 meetings there regarding the census?

3 A. No.

4 Q. Not --

5 A. Not to my knowledge.

6 Q. What topics are you aware that  
7 he discusses when he goes to the White  
8 House?

9 A. Well, you mean topics or  
10 meetings?

11 Q. Well, what is discussed during  
12 these meetings as far as you're aware?

13 A. I'm not always there, so I  
14 don't know.

15 Q. When you are there.

16 A. He will go there for trade  
17 meetings, and I'm a part of some of those.  
18 I have never heard census mentioned once in  
19 a single trade meeting the entire time I've  
20 been there.

21 And he will go for other  
22 meetings that I'm not a part of. So I  
23 don't know what's discussed at the meetings  
24 that I'm not a part of.

25 Q. Do you know if he has ever had

1           A.           I think I might have said hi to  
2 him at the chief of staff meeting, but now  
3 that I think about it, I was late, so I  
4 don't even think I even shook his hand.

5           Q.           How about Secretary Ross and  
6 Attorney General Jeff Sessions, are you  
7 aware of conversations between them?

8           A.           I'm aware that they've had  
9 conversations. I'm not aware of the  
10 content of those conversations.

11          Q.           Do you know if they have ever  
12 spoken about the census generally?

13          A.           I have no idea.

14          Q.           Do you know if they have ever  
15 spoken about immigration enforcement?

16          A.           I have no idea.

17          Q.           Voter fraud?

18          A.           Zero idea.

19          Q.           An undercount?

20          A.           No idea.

21          Q.           Congressional apportionment?

22          A.           No idea.

23          Q.           Redistricting?

24          A.           No idea.

25          Q.           So earlier you mentioned you

1 months?

2 A. It would depend on the week. I  
3 mean, if I just guessed, maybe 60/40,  
4 depending, 70/30.

5 Q. 60 and 70 with Invesco or with  
6 Commerce?

7 A. It just depends. I mean, it  
8 just depends. Most of it was with  
9 Commerce.

10 Q. Forgive me if I'm paraphrasing  
11 wrong, and correct me if I am, but I think  
12 one of the things you said this morning is  
13 that you were copied on a lot of e-mails in  
14 order to gain situational awareness; is  
15 that fair?

16 A. Something like that, just  
17 aware.

18 Q. What do you mean by situational  
19 awareness?

20 A. Here is something, just I'm  
21 e-mailing it to the Secretary and you are  
22 copied on it.

23 Q. Does it mean you are aware of  
24 the people who are working on a particular  
25 issue?

1 A. It depends if I read it or not.

2 Q. Are you copied on these to gain  
3 awareness with the expectation that you  
4 will read them?

5 A. I don't know. I mean, you  
6 know, it is a very good question, because  
7 sometimes people copy me on e-mails that  
8 are totally irrelevant to me and have  
9 nothing to do with anything that I deem of  
10 utmost urgency, and sometimes they forget  
11 to copy me on things that I would have  
12 thought I would have been copied on.

13 So I wish I could answer that.  
14 I don't know, when people copy me, what  
15 makes them decide whether a particular  
16 e-mail is something that I should be on or  
17 not.

18 Q. Would you say that you were  
19 situationally aware of who was working on  
20 the decision to add a citizenship question  
21 to the 2020 census?

22 MS. WELLS: I object to form.

23 A. No. I would say that I was  
24 aware of who was working on census.

25 Q. Did you make any distinction



1 between working on census and working on  
2 the citizenship question?

3 A. No.

4 Q. And who was working on census?

5 A. Karen Dunn Kelley and Earl  
6 Comstock were the main people within the  
7 immediate.

8 Now, Census has, you know,  
9 Census has a huge amount of employees, and  
10 I have even been told when they come in, I  
11 don't sit in on these meetings, but when  
12 they come in to brief the Secretary, they  
13 literally have a van of people who are  
14 driven to Commerce, and, you know, I don't  
15 know those people.

16 Q. Have you ever met any of the  
17 people at Census?

18 A. So I have met Ron and Enrique,  
19 but I always get them confused. Those are  
20 the two that I remember.

21 Q. Forgive me again also if I'm  
22 paraphrasing, but I think this is something  
23 you said this morning, that you're not  
24 generally involved in census because of the  
25 scientific and technical nature of census;

1 is that a fair summary of your testimony?

2 A. Yeah. I mean, the census, I  
3 mean, the analysis and the people who work  
4 there, I mean, this stuff is very  
5 technical, and I don't have the background  
6 for that.

7 Q. Who does have the scientific  
8 and technical background with regard to  
9 census issues?

10 A. Well, I clearly don't.

11 Q. Do you know who does?

12 A. I think the people at Census  
13 do.

14 Q. Does Earl Comstock?

15 A. I think he has a very good  
16 command of a lot of the technical issues.

17 Q. Does he have a scientific  
18 background?

19 A. I don't know what he studied,  
20 but I think -- I mean, I think he actually  
21 does.

22 Q. Does Karen Dunn Kelley have a  
23 command of the scientific and technical  
24 issues regarding census?

25 A. Much better than I would.

1 adding a citizenship question to the 2020  
2 census?

3 A. The decision-maker?

4 Q. Who was ultimately responsible  
5 for the decision?

6 A. I believe it would be the  
7 Secretary, but I'm not a lawyer, so if  
8 there is some other --

9 Q. I'm not asking -- I'm asking  
10 for your understanding --

11 A. Okay.

12 Q. -- sitting here as to what you  
13 understand. I obviously know you're not a  
14 lawyer, and I'm not asking you a legal  
15 question. If I am, she is free to stop me.

16 Who is John Thompson?

17 A. He used to work at Census. I  
18 don't -- I don't know what his title was,  
19 but I know he is no longer there.

20 Q. Did you ever meet John  
21 Thompson?

22 A. I may have, but I don't  
23 remember.

24 Q. I'm going to show you what is  
25 being marked as Exhibit 13.

1 (Teramoto Exhibit 13 marked for  
2 identification.)

3 Q. This is Bates number 3694.  
4 This is an April 20th, 2017 e-mail. It is  
5 quite short.

6 A. Okay. So this is basically a  
7 year and a half ago?

8 Q. Yeah.

9 A. Would you like me to read it,  
10 sir?

11 Q. I have a question about the  
12 subject line first, and I will ask it, and  
13 then you can talk about the subject line  
14 and then talk about the thing.

15 A. Okay.

16 Q. This appears to me to be from  
17 Brooke Alexander, trying to send an e-mail  
18 from Secretary Ross' e-mail and doing it  
19 herself; is that what you understand from  
20 that subject line?

21 A. Let me read it, sir.

22 (Witness perusing document.)

23 A. Okay.

24 Q. Can Brooke Alexander send  
25 e-mails from the Secretary's e-mail

1 ordinarily?

2 A. Well, Brooke Alexander is no  
3 longer there.

4 Q. Could she when she was?

5 A. Well, it says right here she  
6 couldn't, so I don't know.

7 Q. Are you aware of anyone having  
8 the ability to send e-mails from the  
9 Secretary's e-mail account?

10 A. The best person to ask is our  
11 IT person. I suppose somebody could send  
12 an e-mail from his phone.

13 Q. Simply by holding his phone and  
14 logging in as him?

15 A. Yeah. I mean, you could send  
16 an e-mail from his phone.

17 Q. Is it your understanding that  
18 people ever did send e-mails under the  
19 Secretary's e-mail account?

20 A. I don't know. I mean, I would  
21 be -- I would be surprised if somebody  
22 would send something from his e-mail  
23 account.

24 Q. And remind us of Brooke  
25 Alexander's title at this point, as best

1 you recall, or her position in general.

2 A. I mean, in the private world, I  
3 would say she was a secretary. In the  
4 government world, I don't even actually  
5 know. They call them -- they are not --  
6 it's not an executive assistant, but it is  
7 not an assistant. So I don't know what her  
8 title was.

9 Q. And on the body of the e-mail,  
10 this says "we," underlined, "must get our  
11 issue resolved before this."

12 What is "our issue"?

13 A. I have no idea.

14 Q. You understood Earl Comstock to  
15 work on the potential addition of a  
16 citizenship question to the 2020 census?

17 MS. WELLS: I object to form.

18 A. I would say Earl worked on  
19 census.

20 Q. What other issues did Earl work  
21 on on census besides the addition of a  
22 citizenship question?

23 MS. WELLS: I object to form.

24 A. Again, like I said, Earl and  
25 Karen have worked on the census. All the

1 Just to confirm the first one,  
2 is it fair to say this is a submission of  
3 draft testimony of John Thompson from  
4 Census to Commerce for review?

5 A. I don't know who Beth is, so I  
6 don't know if she is with Census or not.

7 Q. Okay. Is it fair to say this  
8 is a draft of testimony of John Thompson  
9 being submitted to Commerce for review?

10 A. Yes.

11 Q. Now let's look at the e-mail  
12 three days later from Comstock to the  
13 Secretary, copying you and Mr. Branstad.

14 (Witness perusing document.)

15 A. Okay.

16 Q. Is it standard practice for  
17 Commerce to review and approve  
18 Congressional statements by chiefs of the  
19 bureaus?

20 A. Yes.

21 Q. And do you do that review?

22 A. No.

23 Q. Who does that review?

24 A. Normally Earl reviews it. I  
25 can't imagine general counsel not. The

1 lawyers, they like to review everything.  
2 And then I believe that also the Leg  
3 Affairs Office reviews those types of  
4 things as well.

5 Q. And what is the purpose of that  
6 review?

7 A. To, I mean, my understanding is  
8 to have -- one is to be aware of what the  
9 bureau chiefs, or whomever is testifying,  
10 what they are testifying, and, two, to make  
11 sure that it is consistent with the  
12 Secretary's views.

13 Q. And these are revisions to  
14 public statements; is that correct?

15 A. Revisions?

16 Q. Or additions or changes or  
17 review, this is a review of a public  
18 statement.

19 MS. WELLS: I object to the  
20 form.

21 Q. A Congressional testimony.

22 A. So this would be I believe a  
23 review of something that eventually would  
24 be public.

25 Q. And is the advice given on



1 Thompson, the director of the Census  
2 Bureau, to give the House Appropriations  
3 Subcommittee this Wednesday. I have  
4 reviewed the testimony, and there are a  
5 couple of points that I wanted to bring to  
6 your attention and be sure you approved  
7 of."

8 So, I mean, I'm not a  
9 dictionary, but when I read these words, he  
10 is basically bringing attention of certain  
11 things that are in this testimony that he  
12 thinks that the Secretary should be aware  
13 of.

14 Q. When you said that Comstock  
15 would do these reviews, were you referring  
16 specifically to the Census Bureau, or does  
17 he do that review for chiefs of any bureau?

18 A. I don't know about any, but I  
19 know he generally likes to review them  
20 himself.

21 Q. And just to refer, again, who  
22 is Eric Branstad?

23 A. So Eric Branstad, and this is  
24 when I testified earlier, I don't remember  
25 if he was -- his title was either White

1 House liaison or senior White House  
2 advisor, but he was a Commerce employee who  
3 was supposed to be interacting with the  
4 White House more than some of the others.

5 (Teramoto Exhibit 15 marked for  
6 identification.)

7 Q. This is Exhibit 15. This does  
8 not have a Bates number.

9 A. Would you like me to read it?

10 Q. I will show you which part of  
11 it I would like you to read, and I'm going  
12 to tell you that I got this from the  
13 internet while searching for the public  
14 testimony delivered on May 3rd, so I  
15 believe this is the public testimony as at  
16 least submitted. It is not a recording,  
17 obviously, of it.

18 A. And this was pulled from the  
19 Commerce website or something else?

20 Q. Or the Census website, I can't  
21 recall at this moment, or the Congress --

22 A. But it wasn't just posted --

23 Q. No, this is an official -- this  
24 is a document from some government website.  
25 I don't know if it was from the committee

1 A. Sure.

2 Q. Okay.

3 (Witness perusing document.)

4 Q. Actually, yeah, in the second  
5 paragraph, just down to "local update."  
6 You don't need to read anything from there.

7 A. So you do or do not want me to  
8 read that paragraph?

9 Q. The second paragraph, the  
10 paragraph that you are on now, you can  
11 read, and I would like you to stop at  
12 "local update."

13 A. Okay.

14 (Witness perusing document.)

15 A. Okay. So I just read --

16 Q. The topics in question --

17 A. -- the two paragraphs out of  
18 your ten pages.

19 Q. That's correct.

20 Were you present for any  
21 conversations regarding a March 2017  
22 deadline for submitting topics to the  
23 census?

24 A. Not that I remember.

25 Q. Were you present for any

1 conversations regarding a March 2018  
2 deadline for submitting questions on the  
3 census to Congress?

4 A. Not that I remember.

5 Q. Did Earl Comstock, to your  
6 knowledge, discuss with John Thompson the  
7 deadline for submitting topics to Congress  
8 on the census?

9 A. I have no idea.

10 Q. Did Earl Comstock, to your  
11 knowledge, discuss with John Thompson the  
12 deadline for submitting questions on the  
13 census to Congress?

14 A. I have no idea.

15 Q. Who would know?

16 A. Earl Comstock.

17 Q. And did Secretary Ross have any  
18 conversations with John Thompson regarding  
19 the March 2017 deadline for submitting  
20 census topics to Congress?

21 A. I have no idea.

22 Q. Who would know?

23 A. Wilbur Ross.

24 Q. Did Secretary Ross have any  
25 discussions with John Thompson about the

1 2018 deadline for submitting questions to  
2 Congress for the 2020 census?

3 A. I have no idea.

4 Q. And who would know?

5 A. Wilbur Ross.

6 Q. And I want you to look at what  
7 I believe was marked as Exhibit 2 today,  
8 which is document number 3699. Is it not?  
9 Is it Exhibit 3? It is the May 2nd e-mail.

10 A. Mine are all messed up.

11 Q. It is Exhibit 2. I have  
12 another copy of it if you want to look at  
13 it. It is not stamped.

14 A. I have it. I will find it.

15 Q. It is this one, if you want to  
16 go visually. I think that's it, the next  
17 one there.

18 A. Okay.

19 Q. Great.

20 Looking at the May 2nd e-mail  
21 from Ross to Comstock, copying Ellen  
22 Herbst, I understand you're not on that  
23 original e-mail, the sentence "Worst of  
24 all, they emphasize that they have settled  
25 with Congress on the questions to be

1 asked."

2 Do you know who Secretary Ross  
3 means when he says "they"?

4 A. I have no idea.

5 Q. And who would know?

6 A. Wilbur Ross.

7 Q. And in the e-mail that you  
8 write above, in this e-mail, are you  
9 providing any information to Wilbur Ross to  
10 assist him in arriving at his decision to  
11 add the citizenship question to the 2020  
12 census looking at just what you wrote?

13 MS. WELLS: I object to the  
14 form.

15 A. What I wrote is "I continue to  
16 talk frequently with Marc Neumann and we  
17 often have dinner together. He will not  
18 leave les, but is in love with the census  
19 and talks about it nonstop. Do you want me  
20 to set up another meeting? Let me know if  
21 you want to have a drink or get together  
22 with him over the weekend. Wendy."

23 I don't see anything in there  
24 about the citizenship question.

25 Q. In fact, you have testified

1 that on no occasion did you provide Ross  
2 information that you drafted that was  
3 helping him with his decision?

4 A. I think I testified that I  
5 never created any documents related to  
6 that.

7 Q. Just for reference, what is  
8 "les" there, is that a person, is that a  
9 company?

10 A. Les is a person.

11 Q. Who is it?

12 A. It is who Marc Neumann works  
13 for.

14 Q. And just for the record, who is  
15 that?

16 A. I don't know the guy's last  
17 name.

18 (Teramoto Exhibit 16 marked for  
19 identification.)

20 Q. I'm showing you a document  
21 marked as Teramoto Exhibit 16, No. 2167.  
22 It is an e-mail from you to James Rockas  
23 and Earl Comstock.

24 To the extent you can review  
25 it, I would like you to review it.

1 exclamation points after "does Karen know  
2 about this"?

3 A. Sure.

4 Q. How often do you use  
5 exclamation points in e-mail?

6 A. All the time.

7 Q. Does this show that this is a  
8 particularly important communication?

9 A. Or I was just being dramatic.

10 Q. And in your e-mail to  
11 Mr. Rockas, are you providing information  
12 for the Secretary to make a decision on the  
13 citizenship question?

14 A. In my e-mail to James?

15 Q. Yeah.

16 A. "Does Karen know about  
17 this!!!!!! She just had discussion with  
18 him."

19 I don't see anything on this  
20 about citizenship.

21 (Teramoto Exhibit 17 marked for  
22 identification.)

23 Q. Let's mark this next one. This  
24 is going to be Teramoto Exhibit 17.

25 What does this look like?



1 A. It looks like an e-mail chain.

2 Q. Okay. From whom to whom?

3 A. It looks like from James to  
4 people. I don't know who James sent it to.

5 And then I'm on it, from myself  
6 to James, Karen Dunn Kelley, Mike Walsh and  
7 Earl Comstock, and then there is an e-mail  
8 back from James to me.

9 Q. And you're asking if he sent  
10 these quotes before. "Did you already send  
11 this to a reporter?"

12 A. I said to him, "Did you already  
13 send this to reporter?"

14 Q. Do you typically approve  
15 communications from the Public Information  
16 Office to reporters?

17 A. Well, "approve" is a different  
18 word. I, on occasion, may have comments.

19 Q. Do you typically review draft  
20 statements to reporters from the Public  
21 Information Office?

22 A. It depends. I haven't reviewed  
23 this.

24 Q. We will in just a second. I  
25 want to ask you questions about process, if

1 you don't mind.

2 A. Sure.

3 Q. Is it typical for the Public  
4 Information Office to send you drafts of  
5 what they are planning to send to  
6 reporters?

7 A. They will generally copy me on  
8 it, depending on what it is, not always,  
9 and they will send it to a group for  
10 comment.

11 Q. And does it matter whether the  
12 issue is more or less important as to  
13 whether you will be copied before or after  
14 it is sent to the reporter?

15 MS. WELLS: I object to the  
16 form.

17 A. I have no idea how they decide  
18 when they start to include me in these  
19 things.

20 Q. And how often do you have  
21 comments back to the Public Information  
22 Office when you get comments from --

23 A. Rarely, because it's not my  
24 expertise.

25 Q. So when you do respond to the

1 Public Information Office on a draft to a  
2 reporter, it's not particularly common; is  
3 that correct?

4 A. No, I didn't say that. It just  
5 depends.

6 Q. What does it depend on?

7 A. It depends, A, if I read it, B,  
8 where it is in the system, C, if anything  
9 pops out at me.

10 Q. I guess I would like you to  
11 review this, but I want you to review this  
12 with the question in mind as to whether you  
13 see anything in here that is relevant to  
14 the decision to add a citizenship question  
15 to the 2020 census.

16 So just review it with that in  
17 mind and tell me if you find anything.

18 A. So you want me to read this?  
19 Because I don't remember having read this  
20 before.

21 Q. Okay. Then let's ask this  
22 question:

23 Why would you ask him if he had  
24 already sent it to the reporter without  
25 reading it?

1           A.           I'm wondering if he already  
2 sent it without getting comments from  
3 people.

4           Q.           Do you believe you did read  
5 this at any point?

6           A.           No. I mean, I might have  
7 skimmed it, but I've got to tell you, an  
8 e-mail this long, I wouldn't read.

9           Q.           What would you skim it for?

10          A.           Anything that pops out. But I  
11 don't remember reading this. If you would  
12 like me to, I'm happy to read it now.

13          Q.           If you are representing that  
14 you didn't read it at the time, I'm --

15          A.           I'm saying I don't remember  
16 reading it. I don't believe I have read  
17 it, but I'm happy to read it now if you  
18 would like me to.

19          Q.           Just for the ease of our court  
20 reporter, we both have done this a little  
21 bit, but let's let each other finish before  
22 we start --

23          A.           Oh, I'm sorry.

24          Q.           I have interrupted you a few  
25 times. That's all right. I just want to

1 A. Not that I remember.

2 Q. About the budget for the  
3 census?

4 A. I'm sorry, is this about public  
5 statements?

6 Q. Have you made edits to public  
7 statements about census budgeting?

8 A. No, I don't believe so.

9 Q. Have you reviewed public  
10 statements about hiring enumerators for the  
11 census?

12 A. I don't remember reviewing any  
13 public statements regarding hiring  
14 enumerators.

15 (Teramoto Exhibit 20 marked for  
16 identification.)

17 Q. We are on No. 20. This is an  
18 e-mail stamped 2525. It is blissfully  
19 short, so I think you can review it in full  
20 before I ask you questions about it.

21 Let me know when you're ready.

22 (Witness perusing document.)

23 A. Okay.

24 Q. The subject is Census, and the  
25 e-mail is "Please arrange a quick update

1 for me tomorrow a.m."

2 What steps would you take to  
3 arrange for a quick update for the  
4 Secretary on census issues?

5 A. So, first, I don't remember  
6 specifically what I did here.

7 My best guess, if that's okay  
8 with you, sir --

9 Q. Sure.

10 A. -- is I would have forwarded  
11 that e-mail to Karen and Earl and said  
12 "here."

13 Q. Would you have contacted anyone  
14 else?

15 A. Maybe I would have CC'd the  
16 scheduler and his assistant just so they  
17 have this situational awareness that he is  
18 asking for it, but no.

19 Q. Would you contact anyone at  
20 Census?

21 A. No.

22 Q. Would you contact anyone at  
23 DOJ?

24 A. No.

25 Q. Would you contact anyone at the

1       brief him?

2               A.       Sure.

3               Q.       What are the issues that that  
4       would be true of?

5               A.       I would say when we were  
6       talking about the China discussions, he had  
7       asked me for an update.

8               Q.       And that's something that you  
9       would work directly on, the China  
10      discussions?

11              A.       I would say I was more  
12      knowledgeable.

13              Q.       Okay. And do you recall what  
14      Karen or Earl said when you reached out to  
15      them, if you did?

16              A.       I think the first thing I said  
17      in my -- when I testified was I don't  
18      remember what I did. So I don't know if I  
19      actually reached out to Karen and Earl.

20              Q.       Okay.

21                      (Teramoto Exhibit 21 marked for  
22      identification.)

23              Q.       This is Exhibit 21. It is  
24      Bates stamped 3597.

25                      Let's identify the people on

1 it, to the extent we haven't identified  
2 them before, and then we can read the  
3 e-mail.

4 Starting with the sender on  
5 March 20th, do you know who Michael Phelps  
6 is?

7 A. Yes. He is in the Budget  
8 Office.

9 Q. Of which department?

10 A. Oh, of Commerce.

11 Q. Mike Platt?

12 A. Mike Platt is the head of our  
13 Leg Affairs.

14 Q. And Ross Branson?

15 A. And Ross works with Mike Platt.

16 Q. The only other name we don't  
17 know is Lisa Casias.

18 A. So Lisa Casias is -- I think  
19 she is the acting CFO right now.

20 Q. And the date of this e-mail is  
21 March 20th, 2018?

22 A. Correct.

23 Q. And the people mentioned are  
24 Bob Bonner and Mr. Serrano, and tell me if  
25 you can identify them, and then we will



1 Q. Do you recall this e-mail at  
2 all?

3 A. No.

4 Q. Did you take any action when  
5 you got this e-mail?

6 A. Not that I can remember.

7 Q. Who did prepare the Secretary  
8 for his Congressional testimony?

9 A. So I guess depending on the  
10 topic, but normally it is prepared by the  
11 Leg Affairs Group, general counsel.

12 So that would be Mike Platt and  
13 Ross, and just depending on what he is --  
14 what the hearing is on sort of depends  
15 which group is most involved in his  
16 testimony.

17 Q. And would you be present for  
18 that preparation?

19 A. No.

20 Q. Would you know it was going on?

21 A. Loosely.

22 Q. Would they be -- would they  
23 provide him with written talking points in  
24 advance of his preparation generally?

25 A. I believe he has written

1 New York Immigration Coalition v. US Dept. of Commerce  
2 Wendy Teramoto

3 ACKNOWLEDGMENT OF DEPONENT

4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the foregoing  
6 pages and that the same is a correct  
7 transcription of the answers given by  
8 me to the questions therein propounded,  
9 except for the corrections or changes in form  
10 or substance, if any, noted in the attached  
11 Errata Sheet.

12  
13 \_\_\_\_\_  
14 DATE

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